

County Tax Appeal Board Member Resource Manual

Montana Tax Appeal Board P.O. Box 200138 Helena, MT 59620-0138 (406) 444-9570 www.mtab.mt.gov

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County Tax Appeal Board Members...WELCOME!

The 56 County Tax Appeal Boards were created by the 1972 Montana Constitution and statute to hear appeals relating to taxpayer grievances about appraisals and assessments. The County Tax Appeal Board was created to be entirely separate from the Department of Revenue and is an independent, neutral finder of fact. The County Boards are overseen by the Montana Tax Appeal Board. It is the duty of the Montana Tax Appeal Board to provide you with training resources and assistance to perform your duties as a member of a County Tax Appeal Board.

The County Tax Appeal Board is designed to provide a neutral and independent review of property values in each county. As you know, each Board is comprised of at least three members appointed by the County Commission, serving staggered three-year terms. You are assisted by a County Tax Appeal Board secretary who is responsible for all of the organizational and record-keeping responsibilities of the Board.

More information is also available on the Montana Tax Appeal Board website: www.mtab@mt.gov with reference materials pertinent to the appeal process, information on the current Montana Tax Appeal Board tax appeal cases and lots more. Please do not hesitate to contact us by phone or email. We believe that County Boards play a critical role in showing the taxpayers that we listen to their concerns, and provide independence and fairness in Montana taxation.

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Organizational Matters and CTAB Statute

The 56 County Tax Appeal Boards (CTAB) may hear appeals from July 1 through December 31 of each year. Your County Board is directed to hold an organizational meeting on the date of its first scheduled meeting to hear appeals. §15-15-101, MCA.

Your job, as a Board, is to hold impartial hearings to determine if the Department of Revenue has properly determined the market value and classification for a property.

If a taxpayer or their designated representative fails to appear at a correctly scheduled hearing before CTAB, that person cannot be granted a reduction in value by the county board and cannot file an appeal before the Montana Tax Appeal Board. §15-15-103, MCA. We encourage you to accommodate people by arranging for them to "appear" by telephone when they would otherwise be unable to participate. This is especially important for a taxpayer making any Americans with Disabilities Act request for accommodations.

If your County Tax Appeal Board is unable to hear all the appeals filed during a current tax year, you must request an extension of the hearing session from the Montana Tax Appeal Board (MTAB). Failing to hear and decide a case results in a default judgment in favor of the taxpayer, so the taxpayer would be granted whatever value they requested. To avoid this, the CTAB must send MTAB a letter or email before year end requesting an extension. The secretary manual has a sample extension letter to use.

Practical Matters

The Montana Tax Appeal Board, strives to be as conscientious as possible about holding down expenses, and we ask you to do the same on the county level. Please consider the following suggestions:

- > Try to schedule as many hearings as possible per day, up to six per day.
- > For each hearing, ask your secretary to call the taxpayer a few days in advance to remind the taxpayer of the time and location of the impending hearing. (*This should cut down considerably on the 'no shows' and subsequent waste of your time and taxpayer money*).
- ➤ Your organizational meeting (at which you elect a chairperson and a vice chairperson) should be held fifteen minutes to one-half hour before your first hearing of the new tax year. Do not hold a separate meeting on a different day just for the organizational meeting.
- ➤ Make your decisions at the close of each day of hearings. Your deliberations are subject to open meeting laws, and thus must not occur via email, phone, or outside the noticed time. (*Montana Attorney General Opinion No. 61, 1088 Mont. AG LEXIS 12*). MTAB will pay for your time spent deliberating appeal outcomes according to our guidelines.

The meetings you conduct to hear property appeals ultimately translate into public funds. Your careful stewardship of public funds is important for your county.

Ethical Matters

County Tax Appeal Boards are public entities. As a member of the Board, you represent the Board and have a duty of loyalty to the Board. It is important to keep the following sections in mind when performing your duties as a Board member.

Open Meetings

The Montana Constitution favors open meetings. Thus, your Board meetings must ordinarily be open to the public. Some material used by the Department of Revenue (DOR) for property tax valuation is public information. For example, Property Record Cards (PRC's) are public information. However, Realty Transfer Certificates (RTC's) used to show comparable sales in valuing property are deemed confidential by law. §15-7-308, MCA.

You have a legal and ethical duty to protect the confidentiality of the RTC's, and any material with a social security number, tax ID number or other sales price information. You do not, however need to close the entire hearing. Only the portion where this confidential information is discussed will need to be closed and the room cleared. After the hearing redact this sensitive information from extra copies. Documents containing this information should be placed in a sealed envelope in the case file and be marked 'confidential'.

The Montana Supreme Court has stated that, even though the RTC's are confidential, a taxpayer has the right to review all material used in valuing his or her property. See DeVoe v.DOR,263 Mont.100, 866 P.2d 228.

Thus, the Department must make all such information available to the taxpayer, including pertinent RTC's. In addition, the Montana Tax Appeal Board has determined the taxpayer has the right to see all information used in valuing his or her property, including confidential information, before the hearing, and with enough time for review.

Consequently, the Board may make sure the DOR has given all appropriate information to the taxpayer in advance of the hearing.

Your deliberations are deemed public. At the end of the hearing, the chairperson shall state the hearing has concluded, and deliberation will follow. According to the Montana Attorney General, *Opinion No. 61,1988 Mont. AG LEXIS 12*, your deliberations after a hearing are a public meeting, which must be conducted in the open, unless the privacy of the taxpayer exceeds the public's right to know. The taxpayer and the DOR are entitled to be present during deliberations but may not speak. Make sure your conversation and decision relate only to the evidence, and not to the personalities or behavior of the parties during the hearing. Please see the full AG opinion included in this manual.

Don't Use Confidential Information

You may not use confidential information made available to you as a Board member for your own benefit or the benefit of others. You must keep information confidential. The includes making sure you don't disclose the information from a hearing in conversations with neighbors, family, or in the community.

Communication with the Parties

An *ex parte* conversation is a conversation with one side in a case when the other side is not present. It is prohibited. Part of your duty as a Board member is to be impartial about the case before you. Do not communicate with a taxpayer or the Department of Revenue outside of the hearing, or when only one party is present.

You may not have an *ex parte* conversation with either the taxpayer or the Department about a case filed with the Board on which you sit. To prevent *ex parte* conversations your secretary should be the Board's only contact person for the taxpayer and the DOR outside of a hearing. If you are contacted by a party about the case, you should refer that party to your board secretary.

Remember, this includes any conversations with the DOR in the hallways, courthouse, or the post office. Also, conversations with tax attorneys, or taxpayers both before the hearing and after the hearing, before a decision is made.

Evidence Only

In deciding a case, you are limited to using ONLY the information you received in the hearing as the basis for your decision. You cannot drive by the property, or use information gained outside the hearing process, such as searching the web or talking to others familiar with the subject property.

Recusal

Avoid the appearance of a conflict of interest. You must always remain neutral and independent. Thus, if you have a close personal or business relationship with one of the parties (Taxpayer or DOR), you should not sit on the case. For example, if your daughter, father, or business partner is a party or you have your own appeal, you should recuse yourself (meaning excuse yourself from hearing the case). If you recuse yourself from the case notify your chairperson and the secretary, so they can inform the parties well in advance of the hearing

If you recuse yourself, you cannot participate in any way. Do not attend the hearing, do not sit with the other board members or ask questions. You must leave the room. Do not participate in or listen to the board discussion. We are happy to advise you on these matters. The outcome is always better when we consult on issues and concerns prior to your actions.

If you have more that three board members in your county, a different member should sit on the case. If you only have three board members, have only those two sit to hear the case when you recuse yourself.

If you have a question about the ethics of a specific situation, please contact our office.

Hearing Procedures

In order to assure a fair hearing for all parties before a County Tax Appeal Board, the following procedures should be followed:

- ➤ Allow equal time to both parties. The Board may limit all/both parties' presentations to 20 or 30 minutes to keep the testimony focused. It is a best practice to inform the parties of the time limits in writing or by phone before the hearing, and remind them when the hearing commences.
- ➤ The taxpayer is bringing the complaint and always presents his or her case first. The taxpayer may be referred to as the complainant, the appellant, or the taxpayer.
- > To succeed, the burden of proof is on the taxpayer to demonstrate that the DOR's value is incorrect.
- > The Department of Revenue is defending its appraised value, and always presents its case after the taxpayer. The DOR may be referred to as the respondent, the Department, or the DOR.
- ➤ ALL TESTIMONY is taken under oath, and all who testify must be sworn in. It is the responsibility of the Chair to administer the oath to the witnesses on the record. Those who testify should identify themselves for the record and spell their names the first time they speak.
- ➤ Anyone present at the hearing may be called to testify for the taxpayer except, of course, the members of the County Tax Appeal Board.
- > The taxpayer may question the witness he or she calls.

- > The taxpayer may also make any statements he or she wishes to make or present any information relevant to the value of the property.
- > At the conclusion of the testimony of each witness, the other party may ask questions of that witness.
- > After the DOR finishes questioning a witness, the taxpayer may ask further questions, to clarify or emphasize any portion of the evidence,
- > The chair should check with the Board secretary to be sure the audio recording is clear.

DOR presents its case at the conclusion of the taxpayer case.

- > The DOR has the same right to call witnesses and to make statements and arguments as the taxpayer.
- ➤ The taxpayer may question the DOR's witness and may questions the DOR staff members.
- > The taxpayer may present rebuttal testimony and arguments after the DOR has finished presenting its case.
- ➤ We request the board members hold their questions until the conclusion of the presentation, and cross examination of the witness. This is very important for keeping the hearing on track and allowing the hearing to be accurately transcribed. If you need to ask a clarifying question, please keep it brief.

In fairness, be careful to allow the parties approximately the same amount of time for presentation and questions. It is the responsibility of the chairperson to control the process and timing of a hearing, and to make sure each party has equal time.

Opening Statement

The statement is always given by the Presiding Officer after confirming the secretary is ready to record the hearing.

I'll call this hearing to order. This is a hearing before the County Tax Appeal Board, pursuant to Section
15-15-103 of the Montana Code Annotated, and is an appeal brought to the Board by(Taxpayer's Name) from the decision of the Montana Department of Revenue.
Introductions: I'm (chairperson). I'm here with my fellow members,, and, and our secretary, Will the parties please introduce themselves for the record?
The property involved in this appeal is (legal description or address from appeal form) Verify with the DOR agent that the legal description and value cited from the appeal form is correct.
The DOR has appraised the subject property at a value of
The taxpayer is asking for a value of (use the taxpayer's requested value from appeal form -,verify the amount with taxpayer) OR
The DOR has appraised the property as tract land (or non-qualified ag land) at a value of; the taxpayer contends it should be classified as agricultural land.

The following documents are hereby made a part of the record of this hearing:

 The letter from this board acknowledging receipt and acceptance of the appeal, and

 The notice from this board setting the time and place of this hearing.

The procedures followed by this Board under state law and the Montana Administrative Procedures Act (MAPA) are as follows: The Taxpayer(s) will present his/her/their case first. At the conclusion of the Taxpayer's testimony the opposing party may ask questions. The DOR then presents its case and the Taxpayer may then ask questions. Both parties will be allowed time for brief closing statements.

Please silence your cell phones.

This Board reserves the right to interrupt the proceedings at any time with clarifying questions, but generally will ask its questions after testimony and cross examination of each witness. Because this hearing is being recorded, and may have to be transcribed, we will not allow either party to interrupt the other during testimony. You must reserve your questions until the conclusion of the testimony of each witness. Are there any questions on this procedure? If not, will all those planning to testify please rise, and be placed under oath.

Giving the Oath

Giving the Oath is an important aspect of the hearing. It is a reminder a witness must provide the truth, and that there may be consequences if untruthful statements are made. The hearing may not proceed until all the parties affirm their oath. Your secretary should note each oath administered on the attendance sheet.

After the opening statement, please ask all people who are testifying to stand and raise their right hand. They must answer audibly in the affirmative. The Chairperson also stands and says:

Do you solemnly swear (or affirm) that the evidence and testimony you shall give in this matter be the truth, the whole truth, and nothing but the truth?

County Tax Appeal Board Closing Statement (Given by the Presiding Officer at the hearing)

This concludes the hearing before the _____ County Tax Appeal Board. You will receive a written decision from this board within a few days. If either party is aggrieved by our decision you may appeal to the Montana Tax appeal Board within 30 days upon receipt of the county board decision. Further instructions concerning an appeal to MTAB can be found on the appeal form.

We will now deliberate and issue and make our decision. The parties may stay but <u>may not</u> participate.

Exhibits

Exhibits in the form of documents, photographs, maps, and other documentary evidence that will help the Board to reach a decision may be presented by either party during a hearing. Original exhibits must be kept by the CTAB as part of the official case record. Copies of non-confidential exhibits can be made following the hearing and provided to the other party if not provided during the hearing.

Exhibits should be marked by the secretary in numerical or alphabetical order during the hearing. The label should show whether the exhibit was presented by the Taxpayer (numerical) or the DOR (alphabetical).

The County Tax Appeal Board chairperson should state, for the record, that the exhibit was accepted into evidence, and note whether the opposing party had objections. Typically, the chair should admit exhibits objected to, but note the nature of the objection on the record in case on appeal.

Confidential Information

Certain exhibits may contain confidential information. For example, realty transfer certificates are confidential under Montana law. If one party requests the material be confidential, please mark the material confidential for the file. Remember, everything that you do as a CTAB member is public record. All files will remain open unless one party requests material be held confidential. Realty Transfer Certificates, comparable Sales Data, Computer Assisted Land Pricing materials, and any materials with social security numbers or tax identifiers, as well as tax returns are considered confidential under Montana law. As a member of the County Tax Appeal Board, you may view this information, but you may not discuss the information or use the information for any other purpose. You must hold the **information as confidential.** If you are provided information that has confidential information that you do not need for your hearing, you may black out such information (such as social security numbers). We recommend the board secretary place confidential information in a sealed envelope marked as confidential and attach it to the case file.

Taxpayers also have a legal right to review confidential sales information for purposes of their property tax appeals, and they may do so prior to the hearing (not only on the day of the hearing). The DOR may require that the taxpayer sign a confidentiality agreement or return the information to the DOR after the hearing. As a Board, you are not required to assist the DOR in negotiating how a taxpayer may get confidential information. You may, however, insist that the DOR make a reasonable effort to provide the material to the taxpayer. Please don't hesitate to contact MTAB for assistance if you encounter difficulties in this effort.

Compilation of Comparable Sales

To be read into and as part of the official recording for the transcript of a County Tax Appeal Board hearing.

given a copy of a compilation of comparable sales used to value your property for property tax purposes. By law, this document must be held in strict confidence and must not be disclosed directly or indirectly to the public or anyone not involved in your tax appeal. By accepting and using this document, you agree to be bound by these confidentiality assessments of statutory penalties against you.

Realty Transfer Certificates

The Department of Revenue only uses sales data taken from the realty transfer certificates (RTC) which must be filed with the state when real estate is transferred. RTC's have information not available publicly in listings from real estate brokers about the nature of the transaction and relationship of the parties that enable the DOR to select only arms-length, open market sales for establishing fair market value.

Section 15-7-308, MCA, directs that the disclosure of information on an RTC shall be restricted. The information shall not be a public record, and shall be held confidential by the county clerk and recorder, county assessor and DOR.

In analyzing §15-7-308, MCA, regarding RTC's, the language protects the confidentiality of RTC's only when the demand for individual privacy exceeds the merits of public disclosure. When limited disclosure of relevant RTC information is crucial to a fair and informed decision by a tax appeal board or court, such disclosure outweighs individual privacy.

In contested tax proceedings, relevant information from the RTC's shall be disclosed to the taxpayer party, tax boards and reviewing courts. During the pendency of the proceedings, the RTC information shall not be available to the public. At the conclusion of the proceeding, any portion of the record which contains the disclosed RTC information shall be sealed and not available for public inspection.

When this confidential information is presented at a hearing, the chair should ask anyone in the room other than the taxpayer or their representative, the DOR, board members and secretary, to leave the room. When the presentation and discussion of confidential RTC information is concluded those, who were asked to leave the hearing can return.

How to Manage an Effective Hearing

Fairness is important, regardless of the outcome. Give both sides equal time. Make sure your secretary includes the time limits in the letter setting the hearing date. Inform the parties if they go past their time limit. Your chairperson or the board secretary may keep the time for presentations.

Be professional and respectful. Pay attention to both parties equally. Avoid the appearance of disrespect <u>either verbally or through inattention.</u>

Hold your questions until the party has finished. Your question may be answered during the time of the presentation. The only questions asked during the testimony should be clarifying questions (i.e. "what page are you on?"). All the written materials are part of the evidence, so parties do not need to read them into the record, and you don't need to comment on all of it except where clarification is necessary.

At the end of the hearing state that the hearing has concluded, and deliberation will follow. According to Montana Attorney General, Opinion No. 61, 1988 Mont.AG LEXIS 12, your deliberations after a hearing are considered a public meeting, which must be conducted in the open unless the privacy of the taxpayer exceeds the public's right to know. The taxpayer and the DOR are entitled to be present during deliberations but may not speak. Make sure your conversation and decision relate only to the evidence, and not to the personalities or behavior of the parties during the hearing.

Making a Decision

There are certain standards for decisions by the County and the Montana Tax Appeal Board. The following are some examples of statutes and standards set by the Montana Supreme Court to keep in mind when hearing evidence and writing your decision.

General Standards

The general rule is that the appraisal of the Department of Revenue is presumed to be correct and, the Taxpayer must overcome this presumption to prevail. Higher courts have decided that the DOR should, however, bear a certain burden of providing documented evidence to support its assessed values. Western Airlines, Inc., v. Catherine Michanovich et all., 149 Mont.347, 428 P.2d 3, (1967).

A taxpayer bears the burden of proving the DOR's classification of property is incorrect. Western Airlines, Inc. v. Michunovich (1967), 149 Mont. 347, 353; Farmers Union v. DOR, (1995); 272 Mont. 471.

Provide a brief explanation of your decision after the hearing. What was the basis for your decision? The DOR and the taxpayer are more likely to feel they've had a fair hearing if your decisions appear to be based upon the facts presented. Is your decision in accordance with statute, administrative rule, and generally accepted appraisal principles? Avoid making a decision because you like or don't like the DOR or the taxpayer representatives.

Failure to Hear Appeal

Once taxpayer's appeal is received, the County Tax Appeal Board must hear the case during that calendar year, unless an extension is granted by the Montana Tax Appeal Board allowing the CTAB to continue hearings into the early part of the next calendar year. If a case is not heard before the end of the CTAB term, through no fault of the taxpayer, the <u>taxpayer wins by default</u> and the property value is set at their requested value. §15-15-103, MCA.

Your CTAB may apply to the MTAB for an extension if you anticipate your board will not be able to complete its work within the statutory hearing session (July1st through December 31st). Please send a written request or email to the Montana Tax Appeal Board for an extension of your hearing session. This request should be made well before December 31st. The MTAB will send you a written confirmation granting your request and will notify you of the new timeframe by which you must complete your hearings. The Montana Tax Appeal Board will send a copy of the extension to the Department of Revenue's local office.

Should your board fail to hear all appeals filed within the current tax year, the secretary is responsible for providing a written notification to the DOR, to the MTAB, and to any affected municipal corporation, of each appeal that was automatically granted. §15-15-103(2) (b), MCA. The phrase "municipal corporation" includes county, city, incorporated town, township, school district, irrigation district or drainage district or a person, persons, or organized body authorized by law to establish tax levies for the purpose of raising public revenue. § 15-1-101 (2), MCA.

Tax Appeals and the County Tax Appeal Board

How to Start a Tax Appeal

Any Montana property owner may contest the valuation placed on real property through both a formal and informal process. The date on the classification and appraisal notice (in early spring/summer) triggers the commencement of the appeal timeline. NOTE: This is a different document than the <u>tax bill</u> itself, which is usually received in October.

At the beginning of a reappraisal cycle, and whenever there is a change in valuation, classification, or ownership of property, a taxpayer, including those with a contract for deed, is sent a notice of appraisal valuation or classification. § 15-7-102, MCA. Appeal rights and timelines/deadlines stem <u>from the date on the notice of valuation</u>, not receipt of the tax bill.

A taxpayer may only appeal a property valuation through the formal process once during a reappraisal cycle unless there is a change in property ownership, classification or other significant change to the property. If this occurs a new appraisal notice will be sent to the taxpayer.

To receive relief upon successful completion of an appeal taxes must be timely paid under protest.

Informal Appeal with Department of Revenue

Taxpayers may initially request an informal review of their valuation from the DOR by filing an AB-26 form (which is the request for informal review) within 30 days of the date on the appraisal notice. (§ 15-7-102 (3), MCA: Rule 42.20.505, ARM). The AB-26 form is available at the local appraiser's office or on the Department's website, www.revenue.mt.gov. The completed form is submitted to the local assessment office. The Department is required to review the informal appeal, and state in writing if they made any adjustment to the property valuation or classification. §15-7-102(4), MCA. Filing an AB-26 extends the deadline for filing an appeal with the County Tax Appeal Board until the Department provides a written response. §15-15-102, MCA.

Formal appeal with County Tax Appeal Board

Taxpayers may also file an appeal with the County Tax Appeal Board directly, without going through an AB-26 review. Any appeal filed with the CTAB must be submitted within 30 days of the date on the notice of classification and appraisal of the Department's determination after the AB-26 review. Ordinarily, by the time the tax bill is received in October it is **too late** to appeal the property valuation for that year.

If the appeal is filed <u>within 30 days</u> from the date on the notice and results in a classification or valuation adjustment, <u>any adjustment</u> will apply to both years of the reappraisal cycle.

If the appeal is filed <u>after 30 days</u> from the date on the notice, but before June 1st of the second year, and results in a classification and/or valuation adjustment, <u>the adjustment will only apply to the second year of the reappraisal cycle.</u>

The County Tax Appeal Board, a three-person independent board appointed by the county commissioners, sets a hearing date and holds a hearing on the appeal in the county seat where the property is located. §15-15-103, MCA. Current law allows the county to appoint more than three members, but only three sit on any one-hearing. All property tax appeals relating to agricultural, commercial, residential and forest land property must go through the County Tax Appeal Board hearing process before an appeal may be filed with MTAB.

The county hearings are typically informal (though the witnesses must be sworn in before testifying), a variety of evidence may be presented, and non-attorney representatives like an appraiser, a child or sibling may represent a taxpayer. The taxpayer's representative will need to provide a Power of Attorney signed by the taxpayer(s). This form can be found on the DOR website.

The hearings are open to the public. The board generally reviews evidence of market value and has the authority to adjust market value and/or classification. The board does not have the authority to adjust tax rates or mill levies. The CTAB board also does not have the authority to grant motions that may be requested by taxpayers or their attorneys. For example, Motions for Exclusion of Evidence or other petitions are not appropriate due to the informal nature of the county board hearing.

An Overview of the Reappraisal Process Class Four — Residential and Commercial

Introduction

As directed by law (§15-7-111, MCA) the Department of Revenue appraises all residential and commercial property for tax purposes. Residential, commercial, agricultural, and industrial property is on a 2-year cycle. The date of valuation (lien date) is January 1, 2018 for the cycle beginning January 1, 2019.

Sometime in the summer of 2019, all residential, commercial and agricultural landowners will receive an assessment notice. These notices are sent in the spring in June of the reappraisal year and should not be confused with the tax bills mailed in October.

If the taxpayer files for informal review AB-26 with DOR within 30 days of the date of the classification and appraisal notice, any reduction in value will apply to both years of the cycle. If the taxpayer disagrees with the Department or Revenue's decision on informal review, he or she has 30 days to appeal to the CTAB. If the taxpayer files an appeal with the county board after the 30-day deadline but before June 1, 2020, any reduction in value granted through the appeal system will apply only to the second year of the reappraisal cycle.

Forest land remains on a 6-year reappraisal cycle. The lien date is January 1, 2014 and the DOR mailed assessment notices in the summer of 2015. The next reappraisal valuation date for forest land will be January 1, 2020 with assessment notices mailed the summer of 2021.

Past legislatures have developed certain mitigation strategies to prevent a large tax increase to property owners. However, incremental phase-in of affected property valuations was eliminated. The full reappraisal value will be reflected in the assessment notices. Both homestead and comstead standard exemptions have also been removed from state land by this policy change.

New law directs CTABs and the Montana Tax Appeal Board to consider independent fee appraisals if the appraisals were conducted within six months of the valuation date, and are otherwise compliant with appraisal industry guidelines. If a compliant fee appraisal is not used in the outcome of the appeal, then the reasons must be stated in the decision of that Board.

For forest land, an objection may be made at any time but only once each valuation cycle. It must be made within 30-days from the date of the assessment notice to apply for all years of the 6-year cycle. Any reduction resulting from an objection made more that 30 days after the date on the assessment notices applies for the subsequent remaining years of the 6-year cycle.

Terms used by Department of Revenue

Business Equipment Valuation System (BEVS)

The Business Equipment Valuation System is a computer-assisted valuation system used by the DOR to value and assess personal property business equipment and livestock. BEVS provides the department the ability to generate itemized reporting forms. Property owners only need to review the previously reported information for the current year.

Computer Assisted Mass Appraisal System (CAMA)

The computer assisted mass appraisal system is a software program used by the DOR. This system uses data processing to compare parcels, calculate values, and maintain property characteristics to increase efficiency and accuracy in the appraisal process.

Computer Assisted Land Pricing (CALP) System

CALP is a DOR software program within the costing program of the CAMA system, which gives the appraiser the ability to input the various land-pricing parameters for use in cost valuation of residential and commercial property. Land must be valued separately from any improvements. Agricultural and timber tables are maintained by central office staff. Sales information is analyzed by the DOR appraiser to determine current land values, who then enters the values into the CALP database. The land values can be entered on a front foot, square foot, or acreage basis. Once the land valuation information is in the CALP table, the appraiser codes the property card with the correct neighborhood code and land valuation type (front foot, square foot or acreage basis) on each parcel, and the cost program prices the land.

ORION

ORION is the Department of Revenue's computer assisted mass appraisal software system. This system assists the DOR with the valuation of real property using three approaches to value, the cost approach, income approach, and sales comparison approach.

For the cost approach, the system uses cost tables to generate a "replacement cost new" for each component of a structure. The replacement cost new is then applied to a depreciation table based upon grade, condition, desirability, and utility of the property to arrive at "replacement cost less depreciation" (RCNLD). The RCNLD is factored by the local index of "economic condition factor" (ECF) to yield a market value for each structure from the cost approach to value.

For the sales comparison approach, the system has the capability to take validated sales, remove the land value, run a multiple regression analysis (MRA), and develop a model. The MRA analysis statistically balances and tells the modeler the driving characteristics of the market, and what kind of adjustment value to use. It then selects, for each subject property, the five most comparable valid sales, adjusts them to make the characteristics the same as the subject property, and using a mathematical algorithm, arrives at the most probable sale price of each subject property.

For the income approach, income and expense data is collected on all commercial properties reported to the department to arrive at market rent and expenses. The resulting net income is then divided by the sale price of those commercial properties that have sold in the market to arrive at a capitalization rate that is normalized for the different types of commercial properties such as a retail, office, warehouse, etc.

ORION also assists the DOR with the valuation of personal property such as "business equipment", using valuation methodologies such as acquired cost, Greenbook Guide value, and Iron Works for heavy equipment for property tax purposes.

The Department is charged with appraising over 900,000 Montana properties every two years. ORION is necessary for the DOR to be able to appraise this volume of properties, while still being able to identify the characteristics of each individual property to ensure the fair market value of the individual property. Additionally, the system tracks ownership of both real and personal property for taxation purposes.

Property Record Card

The culmination of the tax appraisal process is the preparation of the Property Record Card (PRC). The PRC reflects the Department of Revenue's final tax appraisal measurements, values, activity for each parcel of taxable property. Each PRC has a section entitled "Appraisal Inspection Information", which displays the times the DOR's appraisers were physically present at the subject property, the type of inspections, and the I.D. number of the DOR employee who was at the premises. In addition, each PRC has a section entitled "Summary of Values". This section sets forth the final appraised land value, the final appraised building value, the final adjusted appraised market value for the property, and the appraisal approach used in arriving at the final property valuation. If the cost approach to value was used, the details of that approach, as well as the applicable Economic Condition Factor (EFC), are detailed on the reverse side of the card. If the market value approach was used, a separate "Montana Comparable Sales Sheet" is generated. Electronic and paper versions exist.

Decoding the DOR's Property Record Card

<u>Parcel Identification</u>---Using a numeric identifier called the "geocode" the DOR identifies the physical location of the subject property, and the properties deemed comparable to the subject parcel by the DOR.

<u>Land Description</u>---The dimension and size of the subject land and the comparables.

<u>Dwelling Description</u>—This section will describe the number of stories, attics, exterior construction, house style, year built, effective year built (if the house has been remodeled), basement type, number of rooms, heating typed, presence of fireplace (WBFP ST: wood-burning, fireplace standing), and finished basement size if applicable.

<u>Grade</u>: This is the quality grade assigned by the DOR appraiser. <u>Grade represents quality</u>. Quality applies to both workmanship and type of materials used. The DOR uses nine basic grades of residences:

- 1 Cheap
- 2 Poor
- 3 Low cost
- 4 Fair
- 5 Average
- 6 Good
- 7 Very good
- 8 Excellent
- 9 Superior

Condition, Desirability and Utility (CDU): This is a measure of the depreciation of the structure. The following categories denote the composite rating of the overall condition, desirability and usefulness of the dwelling. The number after the category indicates its weighting factor in the overall determination of the value for a structure.

- UN UNSOUND to indicate the dwelling is unsound and practically unfit for use. (Given a value of 1)
- VP VERY POOR to indicate the condition approaches unsoundness; extremely undesirable and barely usable. (Given a value of 3)
- PR POOR to indicate definite deterioration is obvious; undesirable and barely usable. (Given a value of 5)
- FR FAIR to indicate marked deterioration, but quite usable; rather unattractive and undesirable. (Given a value of 6)
- AV AVERAGE to indicate normal "wear and tear" is apparent; average attractiveness and desirability. (Given a value of 7)
- GD GOOD to indicate minor deterioration is visible; slightly more attractive and desirable, but useful. (Given a value of 8)
- VG VERY GOOD to indicate slight evidence of deterioration; attractive and quite desirable. (Given a value of 9)
- EX EXCELLENT to indicate perfect condition; very attractive and highly desirable. (Given a value of 10)

The DOR weights desirability more than the condition and utility components of the CDU rating.

The Montana Comparable Sales Sheet also notes the total living area, and an attached/detached garage area and porch area measured from the outside of the structure.

Economic Condition Factor (ECF): For both residential and commercial property when the cost approach is used, the DOR adjusts property values based upon an economic condition factor. ECF is defined as extraordinary economic obsolescence that impacts all property located in a specific neighborhood, community, or geographic area. The ECF attempts to correct for the difference between replacement cost less normal depreciation, and market value as they may differ from locality to locality. The purpose of the ECF is to adjust the cost approach to take local market influences, such as a depressed or very active market area, into account. An ECF of less than one lowers values, and greater that one increases values.

Realty Transfer Certificate RTC: An RTC is a form completed by the seller that records the sales price and must be filed with the local clerk and recorder's office upon all transfers of real property. In developing its sales data base, the DOR relies upon sales data obtained from the RTC. Under Montana law, RTC's are not public documents, therefore the DOR and the clerk and recorder's office must hold the information in strict confidence.

Income Models for Class 4 Commercial Property Appraisals

Models

The fair market value of commercial (income-producing) property is usually based on income. The DOR develops income models for the following types of commercial properties:

Apartments, Hotels/Motels, Mini Warehouses, Offices, Mobile Home Parks, Restaurants, Retail, and Warehouses.

Income based models for commercial property have been developed for the areas listed below. It is possible that an area may not have a model for every type of property listed above.

Areas

Billings, Bozeman*, Butte, Great Falls*, Helena*, Kalispell, Missoula*, and State-wide

The State-wide income area includes the county areas for the cities marked with an asterisk (*) above plus all other counties in the state. The Kalispell area includes all of Flathead County. The Bozeman area includes all of Gallatin County. The Billings area includes all of Yellowstone County.

After the Hearing

After the hearing, the county board issues a written opinion, which is usually set forth on the bottom of the taxpayer's appeal form. § 15-15-103, MCA. The decision must be mailed to **both** parties within three days of the hearing.

The taxpayer, the DOR, or any affected municipal corporation may appeal to the Montana Tax Appeal Board within 30 days of receiving the notice from the county Board. § 15-15-104, MCA.

Appeal to the Montana Tax Appeal Board

Within 30 days of the date the County Tax Appeal Board's decision was received, either party may file for a review of the decision at the MTAB. The state tax appeal board generally holds a *de novo* hearing in the matter. A *de novo* hearing is a "new hearing" for purposes of establishing a new record of the case. Because the Montana Tax Appeal Board is a court of record for tax appeal matters in Montana, MTAB must make a full record in any tax matter in the event of an appeal to the district courts. The MTAB always includes the full CTAB record as part of its record. Thus, it is incumbent upon the County Tax Appeal Board to preserve the record presented the audio recording of the hearing, and the decision it reached. After a decision by the Montana Tax Appeal Board, the losing party may appeal the matter to the District Court, and then the Supreme Court.

County Appeal Annual Timeline

At least one notice must be published in the newspaper of the county tax appeal board's formation, the process of appeals and deadlines. The Clerk & Recorder arranges for the notice but the CTAB must notify the Clerk to do so. We recommend the CTAB publish a second reminder to the taxpayers by mid-May as well.

By May 15 each year (Secretary Handbook)

Property tax appeals must be submitted to the CTAB by filing them with the County Clerk & Recorder's Office. CTAB is responsible for picking up all county appeals.

Within 30 days of the date on assessment notice or DOR AB-26 determination letter.

CTAB meets and hears appeals. An extension from MTAB is possible.

July 1st—Dec. 31st each year.

CTAB must notify both parties of their decision by mail.

Within 3 days after after making decision.

Time period CTAB must retain their records and recordings, unless CTAB decision is appealed to MTAB.

One year.

An aggrieved party (either taxpayer, DOR or both) may appeal the CTAB decision to MTAB if the person making the appeal appeared at the hearing, as required. If appealed, all CTAB records and recordings of the hearing are sent to MTAB.

Within 30 calendar days after receiving the CTAB decision.

County Tax Appeal Board Secretary Overview

Your CTAB secretary is a key member of your CTAB team. Although the secretary's duties are different from yours, you should work closely with the secretary to make sure your County Tax Appeal Board is providing a neutral, independent review of the taxpayer's appeal. Your secretary will very likely be able to answer any procedural questions and get information the board needs.

Your secretary will keep track of the operations of your CTAB. Here are some of the key duties of the Board secretary:

- The CTAB secretary should make sure the Clerk & Recorder has published a notice of the County Tax Appeal Board's meeting in the local newspaper by May 15th, as required in § 15-15-101(6), MCA.
- The Board is responsible for obtaining the written appeals from the Clerk & Recorder, and it should be the CTAB secretary who does this. It is a good practice for the secretary to call or email at least once a week during the annual appeal session.
- The secretary will be taking minutes of the Board sessions. The minutes are used to track the hearings as well as to track expenses to be paid to the county board.
- The secretary will notify the taxpayer and the DOR of hearing dates, locations and times. Coordinate with your secretary regarding the letter of acceptance and setting hearing dates. The CTAB should set more than one hearing for the same day whenever possible.
- The secretary records the hearing, records attendance and keeps track of exhibits. Please help your secretary do this by limiting interruptions, and not allowing more than one person to speak at the same time during the hearing.

- The CTAB secretary mails out the Board decision. Once the Board has reached a decision it must be mailed to the taxpayer and the DOR within three days. An acknowledgement of receipt of decision should be mailed to the parties with the decision. If an acknowledgment form is not returned, the secretary should follow up with the party.
- The secretary will arrange storage for the records, and if the CTAB decision is appealed to the Montana Tax Appeal Board, forward the records, exhibits and audio recording of all testimony of the hearing.

To prevent any appearance of unfairness because of *ex parte* communications, it is best if the secretary is the **only** contact person for both the taxpayer, and the DOR prior to the hearing.

Money Matters

County Tax appeal Board members are paid through the Montana Tax Appeal Board budge, as set by the Legislature. County board members should work with their secretaries who will send travel expense vouchers for honorarium and travel expense to:

Montana Tax Appeal Board P.O. Box 200138 Helena, MT 59620-0138

Montana statute provides that you are paid:

- 1) when attending training meetings called by the Montana Tax Appeal Board.
- 2) when in session hearing appeals.

In authorizing payment of travel expense vouchers, MTAB will refer to the minutes documenting the hearings held.

- The honorarium is \$45 per day for each day the CTAB members meet less than four hours to hear taxpayer appeals.
- The honorarium is \$90 per day for each day the CTAB members meet more than four hours to hear taxpayer appeals.
- The mileage reimbursement rate is \$0.545 cents per mile.
- NOTE: you must travel <u>30 or more miles round-trip from your home</u> to the location of the hearing or meeting called by MTAB. If you travel less that 30 miles round-trip, you are not eligible to claim any reimbursement for mileage expense.
- Meal allowances are: \$5.00 for breakfast, \$6.00 for lunch and \$12.00 for dinner. Meals are allowed during the hearings or meetings with the Montana Tax Appeal Board:

12:01 a.m. and 10:00 a.m. to claim breakfast allowance 10:01 a.m. to 3:00 p.m. to claim lunch allowance 3:01 p.m. to 12:00 midnight to claim dinner allowance.

Be sure to record the <u>hours</u> you spent traveling to and from the location of the meeting if you are claiming a meal reimbursement. Receipts for meals are not needed since it is a flat reimbursement amount.

If you, as a board member, spend money for supplies, postage, copies, phone calls, etc. on board business, put it on the travel expense voucher accompanied by a receipt or a copy of your itemized phone bill. Please see the Appendix for a correctly completed sample Travel Expense Voucher.

All invoices submitted for reimbursement by your county secretary for supplies, postage, copying, pay etc. must be signed and approved by a board member, preferably the chairperson, on the electronic invoice form.

We need your permanent mailing address, phone number and email address. If you move or leave the board, we need to know immediately. This is important between appeal sessions as well, so we will know where to send your 1099 form for taxes and other correspondence.

We will review claims for accuracy, and against the accompanying meeting minutes submitted by your secretary, and strive to have a check issued to you as soon as possible. MCA Contents / TITLE 2 / CHAPTER 3 / Part 2 / 2-3-203 Meetings of pu...

Montana Code Annotated 2017

TITLE 2. GOVERNMENT STRUCTURE AND ADMINISTRATION CHAPTER 3. PUBLIC PARTICIPATION IN GOVERNMENTAL OPERATIONS Part 2. Open Meetings

Meetings Of Public Agencies And Certain Associations Of Public Agencies To Be Open To Public -- Exceptions

- 2-3-203. Meetings of public agencies and certain associations of public agencies to be open to public -- exceptions. (1) All meetings of public or governmental bodies, boards, bureaus, commissions, agencies of the state, or any political subdivision of the state or organizations or agencies supported in whole or in part by public funds or expending public funds, including the supreme court, must be open to the public.
- (2) All meetings of associations that are composed of public or governmental bodies referred to in subsection (1) and that regulate the rights, duties, or privileges of any individual must be open to the public.
- (3) The presiding officer of any meeting may close the meeting during the time the discussion relates to a matter of individual privacy and then if and only if the presiding officer determines that the demands of individual privacy clearly exceed the merits of public disclosure. The right of individual privacy may be waived by the individual about whom the discussion pertains and, in that event, the meeting must be open.
- (4) (a) Except as provided in subsection (4)(b), a meeting may be closed to discuss a strategy to be followed with respect to litigation when an open meeting would have a detrimental effect on the litigating position of the public agency.
- (b) A meeting may not be closed to discuss strategy to be followed in litigation in which the only parties are public bodies or associations described in subsections (1) and (2).
- (5) The supreme court may close a meeting that involves judicial deliberations in an adversarial proceeding.
- (6) Any committee or subcommittee appointed by a public body or an association described in subsection (2) for the purpose of conducting business that is within the jurisdiction of that agency is subject to the requirements of this section.

History: En. Sec. 2, Ch. 159, L. 1963; amd. Sec. 1, Ch. 474, L. 1975; amd. Sec. 1, Ch. 567, L. 1977; R.C.M. 1947, 82-3402; amd. Sec. 1, Ch. 380, L. 1979; amd. Sec. 1, Ch. 183, L. 1987; amd. Sec. 1, Ch. 123, L. 1993; amd. Sec. 1, Ch. 218, L. 2005.

MCA Contents / TITLE 15 / CHAPTER 2 / Part 2 / 15-2-201 Powers and d...

Montana Code Annotated 2017

TITLE 15. TAXATION
CHAPTER 2. STATE TAX APPEAL BOARD
Part 2. Powers and Duties

Powers And Duties

15-2-201. Powers and duties. (1) It is the duty of the state tax appeal board to:

- (a) prescribe rules for the tax appeal boards of the different counties in the performance of their duties and for this purpose may schedule meetings of county tax appeal boards, and it is the duty of all invited county tax appeal board members to attend if possible, and the cost of their attendance must be paid from the appropriation of the state tax appeal board;
- (b) grant, at its discretion, whenever good cause is shown and the need for the hearing is not because of taxpayer negligence, permission to a county tax appeal board to meet beyond the normal time period provided for in 15-15-101(4) to hear an appeal;
 - (c) hear appeals from decisions of the county tax appeal boards;
- (d) hear appeals from decisions of the department of revenue in regard to business licenses, property assessments, taxes, except determinations that an employer-employee relationship existed between the taxpayer and individuals subjecting the taxpayer to the requirements of chapter 30, part 25, and penalties.
- (2) Oaths to witnesses in any investigation by the state tax appeal board may be administered by a member of the board or the member's agent. If a witness does not obey a summons to appear before the board or refuses to testify or answer any material questions or to produce records, books, papers, or documents when required to do so, that failure or refusal must be reported to the attorney general, who shall thereupon institute proceedings in the proper district court to punish the witness for the neglect or refusal. A person who testifies falsely in any material matter under consideration by the board is guilty of perjury and punished accordingly. Witnesses attending shall receive the same compensation as witnesses in the district court. The compensation must be charged to the proper appropriation for the board.
- (3) The state tax appeal board also has the duties of an appeal board relating to other matters as may be provided by law.

History: En. Sec. 8, Ch. 3, L. 1923; re-en. Sec. 2122.8, R.C.M. 1935; amd. Sec. 1, Ch. 137, L. 1957; amd. Sec. 1, Ch. 227, L. 1963; amd. Sec. 1, Ch. 211, L. 1971; amd. Sec. 52(a), Ch. 405, L. 1973; amd. Sec. 3, Ch. 38, L. 1974; R.C.M. 1947, 84-708; amd. Sec. 1, Ch. 502, L. 1981; amd. Sec. 3, Ch. 529, L. 1995; amd. Sec. 1, Ch. 329, L. 2015.

MCA Contents / TITLE 15 / CHAPTER 2 / Part 3 / 15-2-301 Appeal of cou...

Montana Code Annotated 2017

TITLE 15. TAXATION
CHAPTER 2. STATE TAX APPEAL BOARD
Part 3. Appeal Procedure

Appeal Of County Tax Appeal Board Decisions

- 15-2-301. Appeal of county tax appeal board decisions. (1) (a) The county tax appeal board shall mail a copy of its decision to the taxpayer and to the property assessment division of the department of revenue.
- (b) If the appearance provisions of **15-15-103** have been complied with, a person or the department on behalf of the state or any municipal corporation aggrieved by the action of the county tax appeal board may appeal to the state tax appeal board by filing with the state board a notice of appeal within 30 calendar days after the receipt of the decision of the county board. The notice must specify the action complained of and the reasons assigned for the complaint.
 - (c) Notice of acceptance of an appeal must be given to the county board by the state board.
- (d) The state board shall set the appeal for hearing either in its office in the capital or at the county seat as the state board considers advisable to facilitate the performance of its duties or to accommodate parties in interest.
- (e) The state board shall give to the appellant and to the respondent at least 15 calendar days' notice of the time and place of the hearing.
- (2) (a) At the time of giving notice of acceptance of an appeal, the state board may require the county board to certify to it the minutes of the proceedings resulting in the action and all testimony taken in connection with its proceedings.
- (b) The state board may, in its discretion, determine the appeal on the record if all parties receive a copy of the transcript and are permitted to submit additional sworn statements, or the state board may hear further testimony.
- (c) For industrial property that is assessed annually by the department, the state board's review must be de novo and conducted in accordance with the contested case provisions of the Montana Administrative Procedure Act.
- (d) For the purpose of expediting its work, the state board may refer any appeal to one of its members or to a designated hearings officer. The board member or hearings officer may exercise all the powers of the state board in conducting a hearing and shall, as soon as possible after the hearing, report the proceedings, together with a transcript or a tape recording of the hearing, to the state board. The state board shall determine the appeal on the record.

- (3) The state tax appeal board must consider an independent appraisal provided by the taxpayer if the appraisal meets standards set by the Montana board of real estate appraisers and the appraisal was conducted within 6 months of the valuation date. If the state board does not use the appraisal provided by the taxpayer in conducting the appeal, the state board must provide to the taxpayer the reason for not using the appraisal.
- (4) In every hearing at a county seat throughout the state, the state board or the member or hearings officer designated to conduct a hearing may employ a competent person to electronically record the testimony received. The cost of electronically recording testimony may be paid out of the general appropriation for the board.
- (5) Except as provided in subsection (2)(c) regarding industrial property, in connection with any appeal under this section, the state board is not bound by common law and statutory rules of evidence or rules of discovery and may affirm, reverse, or modify any decision. To the extent that this section is in conflict with the Montana Administrative Procedure Act, this section supersedes that act. The state board may not amend or repeal any administrative rule of the department. The state board shall give an administrative rule full effect unless the state board finds a rule arbitrary, capricious, or otherwise unlawful.
- (6) The decision of the state board is final and binding upon all interested parties unless reversed or modified by judicial review. Proceedings for judicial review of a decision of the state board under this section are subject to the provisions of **15-2-303** and the Montana Administrative Procedure Act to the extent that it does not conflict with **15-2-303**.
- (7) Sections 15-6-134 and 15-7-111 may not be construed to prevent the department from implementing an order to change the valuation of property.

History: En. Sec. 9, Ch. 3, L. 1923; re-en. Sec. 2122.9, R.C.M. 1935; amd. Sec. 1, Ch. 33, L. 1939; amd. Sec. 54, Ch. 405, L. 1973; amd. Sec. 4, Ch. 38, L. 1974; amd. Sec. 1, Ch. 277, L. 1974; amd. Sec. 1, Ch. 155, L. 1977; amd. Sec. 1, Ch. 249, L. 1977; R.C.M. 1947, 84-709; amd. Sec. 1, Ch. 611, L. 1979; amd. Secs. 1, 2, Ch. 471, L. 1987; amd. Sec. 1, Ch. 247, L. 1991; amd. Sec. 4, Ch. 594, L. 1993; amd. Sec. 1, Ch. 15, Sp. L. November 1993; amd. Sec. 1, Ch. 134, L. 1997; amd. Sec. 81, Ch. 584, L. 1999; amd. Sec. 1, Ch. 26, L. 2015; amd. Sec. 5, Ch. 361, L. 2015.

MCA Contents / TITLE 15 / CHAPTER 2 / Part 3 / 15-2-302 Direct appeal...

Montana Code Annotated 2017

TITLE 15. TAXATION
CHAPTER 2. STATE TAX APPEAL BOARD
Part 3. Appeal Procedure

Direct Appeal From Department Decision To State Tax Appeal Board -- Hearing

15-2-302. Direct appeal from department decision to state tax appeal board -- hearing. (1) (a) An appeal of a final decision of the department of revenue involving one of the matters provided for in subsection (1)(b) must be made to the state tax appeal board.

- (b) Final decisions of the department for which appeals are provided in subsection (1)(a) are final decisions involving:
 - (i) property centrally assessed under chapter 23;
 - (ii) classification of property as new industrial property;
 - (iii) any other tax, other than the property tax, imposed under this title; or
 - (iv) any other matter in which the appeal is provided by law.
- (2) A person may appeal the department's annual assessment of an industrial property to the state board as provided in this section or to the county tax appeal board for the county in which the property is located as provided in Title 15, chapter 15, part 1.
- (3) The appeal is made by filing a complaint with the state board within 30 days following receipt of notice of the department's final decision. The complaint must set forth the grounds for relief and the nature of relief demanded. The state board shall immediately transmit a copy of the complaint to the department.
- (4) The department shall file with the state board an answer within 30 days following filing of a complaint.
- (5) The state board shall conduct the appeal in accordance with the contested case provisions of the Montana Administrative Procedure Act. Parties to an appeal shall attempt to attain the objectives of discovery through informal consultation or communication before utilizing formal discovery procedures. Formal discovery procedures may not be utilized by a taxpayer or the department unless reasonable informal efforts to obtain the needed information have not been successful.
- (6) The decision of the state board is final and binding upon all interested parties unless reversed or modified by judicial review. Proceedings for judicial review of a decision of the state board under this section are subject to the provisions of **15-2-303** and the Montana Administrative Procedure Act to the extent that it does not conflict with **15-2-303**.

History: En. 84-709.4 by Sec. 2, Ch. 155, L. 1977; R.C.M. 1947, 84-709.4; amd. Sec. 1, Ch. 59, L. 1993; amd. Sec. 5, Ch. 594, L. 1993; amd. Sec. 9, Ch. 491, L. 1997; amd. Sec. 1, Ch. 67, L. 2005; amd. Sec. 2, Ch. 26, L. 2015; amd. Sec. 2, Ch. 102, L. 2017.

KeyCite Red Flag - Severe Negative Treatment Enacted LegislationAmended by 2017 Montana Laws Ch. 7 (H.B. 74),

KeyCite Yellow Flag - Negative TreatmentProposed Legislation

West's Montana Code Annotated Title 15. Taxation (Refs & Annos) Chapter 7. Appraisal Part 1. General Methods

MCA 15-7-102

15-7-102. Notice of classification, market value, and taxable value to owners--appeals

Currentness

- (1)(a) Except as provided in 15-7-138, the department shall mail or provide electronically to each owner or purchaser under contract for deed a notice that includes the land classification, market value, and taxable value of the land and improvements owned or being purchased. A notice must be mailed to the owner only if one or more of the following changes pertaining to the land or improvements have been made since the last notice:
 - (i) change in ownership;
 - (ii) change in classification;
 - (iii) change in valuation; or
 - (iv) addition or subtraction of personal property affixed to the land.
 - (b) The notice must include the following for the taxpayer's informational purposes:
 - (i) a notice of the availability of all the property tax assistance programs available to property taxpayers, including the property tax assistance programs provided for in Title 15, chapter 6, part 3, and the residential property tax credit for the elderly provided for in 15-30-2337 through 15-30-2341;
 - (ii) the total amount of mills levied against the property in the prior year; and
 - (iii) a statement that the notice is not a tax bill.
- (c) When the department uses an appraisal method that values land and improvements as a unit, including the sales comparison approach for residential condominiums or the income approach for commercial property, the notice must contain a combined appraised value of land and improvements.

- (d) Any misinformation provided in the information required by subsection (1)(b) does not affect the validity of the notice and may not be used as a basis for a challenge of the legality of the notice.
- (2)(a) Except as provided in subsection (2)(c), the department shall assign each classification and appraisal to the correct owner or purchaser under contract for deed and mail or provide electronically the notice in written or electronic form, adopted by the department, containing sufficient information in a comprehensible manner designed to fully inform the taxpayer as to the classification and appraisal of the property and of changes over the prior tax year.
 - (b) The notice must advise the taxpayer that in order to be eligible for a refund of taxes from an appeal of the classification or appraisal, the taxpayer is required to pay the taxes under protest as provided in 15-1-402.
 - (c) The department is not required to mail or provide electronically the notice to a new owner or purchaser under contract for deed unless the department has received the realty transfer certificate from the clerk and recorder as provided in 15-7-304 and has processed the certificate before the notices required by subsection (2)(a) are mailed or provided electronically. The department shall notify the county tax appeal board of the date of the mailing or the date when the taxpayer is informed the information is available electronically.
- (3)(a) If the owner of any land and improvements is dissatisfied with the appraisal as it reflects the market value of the property as determined by the department or with the classification of the land or improvements, the owner may request an informal classification and appraisal review by submitting an objection on written or electronic forms provided by the department for that purpose.
 - (i) For property other than class three property described in 15-6-133, class four property described in 15-6-134, and class ten property described in 15-6-143, the objection must be submitted within 30 days from the date on the notice.
- (ii) For class three property described in 15-6-133 and class four property described in 15-6-134, the objection may be made only once each valuation cycle. An objection must be made in writing within 30 days from the date on the classification and appraisal notice for a reduction in the appraised value to be considered for both years of the 2-year valuation cycle. An objection made more than 30 days from the date of the classification and appraisal notice will be applicable only for the second year of the 2-year valuation cycle. For an objection to apply to the second year of the valuation cycle, the taxpayer must make the objection in writing no later than June 1 of the second year of the valuation cycle or, if a classification and appraisal notice is received in the second year of the valuation cycle, within 30 days from the date on the notice.
 - (iii) For class ten property described in 15-6-143, the objection may be made at any time but only once each valuation cycle. An objection must be made in writing within 30 days from the date on the classification and appraisal notice for a reduction in the appraised value to be considered for all years of the 6-year appraisal cycle. An objection made more than 30 days after the date of the classification and appraisal notice applies only for the subsequent remaining years of the 6-year reappraisal cycle. For an objection to apply to any subsequent year of the valuation cycle, the taxpayer must make the objection in writing no later than June 1 of the year for which the value is being appealed or, if a classification and appraisal notice is received after the first year of the valuation cycle, within 30 days from the date on the notice.

- (b) If the objection relates to residential or commercial property and the objector agrees to the confidentiality requirements, the department shall provide to the objector, by posted mail or electronically, within 8 weeks of submission of the objection, the following information:
 - (i) the methodology and sources of data used by the department in the valuation of the property; and
 - (ii) if the department uses a blend of evaluations developed from various sources, the reasons that the methodology was used.
- (c) At the request of the objector, and only if the objector signs a written or electronic confidentiality agreement, the department shall provide in written or electronic form:
 - (i) comparable sales data used by the department to value the property; and
 - (ii) sales data used by the department to value residential property in the property taxpayer's market model area.
- (d) For properties valued using the income approach as one approximation of market value, notice must be provided that the taxpayer will be given a form to acknowledge confidentiality requirements for the receipt of all aggregate model output that the department used in the valuation model for the property.
- (e) The review must be conducted informally and is not subject to the contested case procedures of the Montana Administrative Procedure Act. As a part of the review, the department may consider the actual selling price of the property and other relevant information presented by the taxpayer in support of the taxpayer's opinion as to the market value of the property. The department shall consider an independent appraisal provided by the taxpayer if the appraisal meets standards set by the Montana board of real estate appraisers and the appraisal was completed within 6 months of the valuation date pursuant to 15-8-201. If the department does not use the appraisal provided by the taxpayer in conducting the appeal, the department must provide to the taxpayer the reason for not using the appraisal. The department shall give reasonable notice to the taxpayer of the time and place of the review.
- (f) After the review, the department shall determine the correct appraisal and classification of the land or improvements and notify the taxpayer of its determination by mail or electronically. The department may not determine an appraised value that is higher than the value that was the subject of the objection unless the reason for an increase was the result of a physical change in the property or caused by an error in the description of the property or data available for the property that is kept by the department and used for calculating the appraised value. In the notification, the department shall state its reasons for revising the classification or appraisal. When the proper appraisal and classification have been determined, the land must be classified and the improvements appraised in the manner ordered by the department.
- (4) Whether a review as provided in subsection (3) is held or not, the department may not adjust an appraisal or classification upon the taxpayer's objection unless:

- (a) the taxpayer has submitted an objection on written or electronic forms provided by the department; and
- (b) the department has provided to the objector by mail or electronically its stated reason in writing for making the adjustment.
- (5) A taxpayer's written objection to a classification or appraisal and the department's notification to the taxpayer of its determination and the reason for that determination are public records. The department shall make the records available for inspection during regular office hours.
- (6) If a property owner feels aggrieved by the classification or appraisal made by the department after the review provided for in subsection (3), the property owner has the right to first appeal to the county tax appeal board and then to the state tax appeal board, whose findings are final subject to the right of review in the courts. The appeal to the county tax appeal board, pursuant to 15-15-102, must be filed within 30 days from the date on the notice of the department's determination. A county tax appeal board or the state tax appeal board may consider the actual selling price of the property, independent appraisals of the property, and other relevant information presented by the taxpayer as evidence of the market value of the property. If the county tax appeal board or the state tax appeal board determines that an adjustment should be made, the department shall adjust the base value of the property in accordance with the board's order.

Credits

Enacted by Laws 1957, ch. 191, § 5. Amended by Laws 1973, ch. 405, § 17; Revised Code of Montana 1947, 84-429.11; amended by Laws 1979, ch. 710, § 3; amended by Laws 1983, ch. 105, § 1; amended by Laws 1983, ch. 526, § 11; amended by Sp. Sess. Laws June 1986, ch. 29, § 3; amended by Laws 1987, ch. 613, § 2; amended by Laws 1989, ch. 9, § 1; amended by Laws 1989, ch. 636, § 1; amended by Laws 1991, ch. 680, §§ 1, 7; amended by Laws 1993, ch. 227, § 2; amended by Laws 1993, ch. 594, § 8; amended by Sp. Sess. Laws Nov. 1993 (Laws 1993, 1st Sp. Sess.), ch. 27, § 39; amended by Laws 1995, ch. 30, § 2; amended by Laws 1995, ch. 574, § 10; amended by Laws 1997, ch. 414, § 2; amended by Laws 1997, ch. 463, § 3; amended by Laws 1999, ch. 56, § 1; amended by Laws 1999, ch. 584, § 85; amended by Laws 2001, ch. 444, § 3; amended by Laws 2003, ch. 114, § 20; amended by Laws 2005, ch. 532, § 13; amended by Laws 2005, ch. 584, § 4; amended by Laws 2009, ch. 483, § 6, eff. May 10, 2009; amended by Laws 2011, ch. 356, § 2, eff. Oct. 1, 2011; amended by Laws 2011, ch. 399, § 1, eff. July 1, 2012; amended by Laws 2015, ch. 336, § 1, eff. April 28, 2015; amended by Laws 2015, ch. 361, § 14, eff. April 29, 2015; amended by Laws 2017, ch. 20, § 1, eff. Feb. 17, 2017.

Notes of Decisions (25)

MCA 15-7-102, MT ST 15-7-102

Current through chapters effective, July 1, 2017 session. Statutory changes are subject to classification and revision by the Code Commissioner. Court Rules in the Code are current with amendments received through September 1, 2016.

End of Document

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Montana Code Annotated 2017

TITLE 15. TAXATION
CHAPTER 7. APPRAISAL
Part 3. Realty Transfer Act

Disclosure Of Information Restricted --Exceptions

15-7-308. Disclosure of information restricted -- exceptions. (1) Except as provided in subsection (2), the certificate required by this part and the information contained in the certificate are not a public record and must be held confidential by the county clerk and recorder and the department. This is because the legislature finds that the demands of individual privacy outweigh the merits of public disclosure. The confidentiality provisions do not apply to compilations from the certificates, to summaries, analyses, and evaluations based upon the compilations, or to sales data used by the department to value residential property in a property taxpayer's market model area after the property taxpayer signs a written or electronic confidentiality agreement.

(2) The confidentiality provisions of this section do not apply to the information contained in the water right ownership update form or any other form prepared and filed with the department of natural resources and conservation pursuant to 85-2-424 for purposes of maintaining a system of centralized water right records as mandated by Article IX, section 3(4), of the Montana constitution. A person may access water right transfer information through the department of natural resources and conservation pursuant to the department's implementation of the requirements of 85-2-112(3).

History: En. 84-7308 by Sec. 8, Ch. 528, L. 1975; R.C.M. 1947, 84-7308; amd. Sec. 45, Ch. 27, Sp. L. November 1993; amd. Sec. 2, Ch. 167, L. 1997; amd. Sec. 2, Ch. 70, L. 2005; amd. Sec. 1, Ch. 366, L. 2007; amd. Sec. 2, Ch. 336, L. 2015.

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TITLE 15. TAXATION
CHAPTER 15. PROPERTY TAX APPEALS
Part 1. County Tax Appeal Board

County Tax Appeal Board -- Meetings And Compensation

- **15-15-101.** County tax appeal board -- meetings and compensation. (1) The board of county commissioners of each county shall appoint a county tax appeal board, with a minimum of three members and with the members to serve staggered terms of 3 years each. The members of each county tax appeal board must be residents of the county in which they serve.
- (2) (a) The members receive compensation as provided in subsection (2)(b) and travel expenses, as provided for in **2-18-501** through **2-18-503**, only when the county tax appeal board meets to hear taxpayers' appeals from property tax assessments or when they are attending meetings called by the state tax appeal board. Travel expenses and compensation must be paid from the appropriation to the state tax appeal board.
 - (b) (i) The daily compensation for a member is as follows:
 - (A) \$45 for 4 hours of work or less; and
 - (B) \$90 for more than 4 hours of work.
- (ii) For the purpose of calculating work hours in this subsection (2)(b), work includes hearing tax appeals, deliberating with other board members, and attending meetings called by the state tax appeal board.
- (3) Office space and equipment for the county tax appeal boards must be furnished by the county. All other incidental expenses must be paid from the appropriation of the state tax appeal board.
- (4) The county tax appeal board shall hold an organizational meeting each year on the date of its first scheduled hearing, immediately before conducting the business for which the hearing was otherwise scheduled. At the organizational meeting, the members shall choose one member as the presiding officer of the board. The county tax appeal board shall continue in session from July 1 of the current tax year until December 31 of the current tax year to hear protests concerning assessments made by the department until the business of hearing protests is disposed of and, as provided in 15-2-201, may meet after December 31.
- (5) In counties that have appointed more than three members to the county tax appeal board, only three members shall hear each appeal. The presiding officer shall select the three members hearing each appeal.

- (6) In connection with an appeal, the county tax appeal board may change any assessment or fix the assessment at some other level. Upon notification by the county tax appeal board, the county clerk and recorder shall publish a notice to taxpayers, giving the time the county tax appeal board will be in session to hear scheduled protests concerning assessments and the latest date the county tax appeal board may take applications for the hearings. The notice must be published in a newspaper if any is printed in the county or, if none, then in the manner that the county tax appeal board directs. The notice must be published by May 15 of the current tax year.
- (7) Challenges to a department rule governing the assessment of property or to an assessment procedure apply only to the taxpayer bringing the challenge and may not apply to all similarly situated taxpayers unless an action is brought in the district court as provided in **15-1-406**.

History: Secs. 2113 to 2121 were enacted as Secs. 60 to 70, pp. 96 to 99, L. 1891, appearing as Secs. 3780 to 3790, Pol. C. 1895; re-en. Secs. 2572 to 2582, Rev. C. 1907; Sec. 2572, Rev. C. 1907; re-en. Sec. 2113, R.C.M. 1921; Cal. Pol. C. Sec. 3672; re-en. Sec. 2113, R.C.M. 1935; amd. Sec. 36, Ch. 405, L. 1973; amd. Sec. 1, Ch. 38, L. 1974; amd. Sec. 1, Ch. 285, L. 1975; amd. Sec. 1, Ch. 355, L. 1977; amd. Sec. 25, Ch. 453, L. 1977; R.C.M. 1947, 84-601; amd. Sec. 1, Ch. 630, L. 1979; amd. Sec. 2, Ch. 502, L. 1981; amd. Sec. 5, Ch. 526, L. 1981; amd. Sec. 1, Ch. 216, L. 1983; amd. Sec. 13, Ch. 526, L. 1983; amd. Sec. 1, Ch. 242, L. 1991; amd. Sec. 9, Ch. 594, L. 1993; amd. Sec. 76, Ch. 27, Sp. L. November 1993; amd. Sec. 2, Ch. 56, L. 1999; amd. Sec. 1, Ch. 197, L. 2011; amd. Sec. 2, Ch. 329, L. 2015.

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TITLE 15. TAXATION
CHAPTER 15. PROPERTY TAX APPEALS
Part 1. County Tax Appeal Board

Application For Reduction In Valuation

15-15-102. Application for reduction in valuation. (1) The valuation of property may not be reduced by the county tax appeal board unless either the taxpayer or the taxpayer's agent makes and files a written application for reduction with the county tax appeal board.

- (2) The application for reduction may be obtained at the local appraisal office or from the county tax appeal board. The completed application must be submitted to the county clerk and recorder. The date of receipt is the date stamped on the appeal form by the county clerk and recorder upon receipt of the form. The county tax appeal board is responsible for obtaining the applications from the county clerk and recorder.
- (3) One application for reduction may be submitted during each valuation cycle. The application must be submitted within the time periods provided for in **15-7-102**(3)(a).
- (4) A taxpayer who receives an informal review by the department of revenue as provided in 15-7-102(3) may appeal the decision of the department of revenue to the county tax appeal board as provided in 15-7-102(6). The taxpayer may not file a subsequent application for reduction for the same property with the county tax appeal board during the same valuation cycle.
- (5) If the department's determination after review is not made in time to allow the county tax appeal board to review the matter during the current tax year, the appeal must be reviewed during the next tax year, but the decision by the county tax appeal board is effective for the year in which the request for review was filed with the department. The application must state the post-office address of the applicant, specifically describe the property involved, and state the facts upon which it is claimed the reduction should be made.

History: Secs. 2113 to 2121 were enacted as Secs. 60 to 70, pp. 96 to 99, L. 1891, appearing as Secs. 3780 to 3790, Pol. C. 1895; re-en. Secs. 2572 to 2582, Rev. C. 1907; Sec. 2574, Rev. C. 1907; re-en. Sec. 2115, R.C.M. 1921; Cal. Pol. C. Sec. 3674; amd. Sec. 2, Ch. 187, L. 1933; re-en. Sec. 2115, R.C.M. 1935; amd. Sec. 1, Ch. 103, L. 1945; amd. Sec. 2, Ch. 196, L. 1957; amd. Sec. 38, Ch. 405, L. 1973; amd. Sec. 1, Ch. 360, L. 1975; amd. Sec. 3, Ch. 155, L. 1977; amd. Sec. 3, Ch. 355, L. 1977; R.C.M. 1947, 84-603; amd. Sec. 2, Ch. 630, L. 1979; amd. Sec. 4, Ch. 9, L. 1989; amd. Sec. 3, Ch. 227, L. 1993; amd. Sec. 77, Ch. 27, Sp. L. November 1993; amd. Sec. 1, Ch. 30, L. 1995; amd. Sec. 3, Ch. 56, L. 1999; amd. Sec. 23, Ch. 361, L. 2015; amd. Sec. 2, Ch. 20, L. 2017.

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Montana Code Annotated 2017

TITLE 15. TAXATION
CHAPTER 15. PROPERTY TAX APPEALS
Part 1. County Tax Appeal Board

Examination Of Applicant -- Failure To Hear Application

15-15-103. Examination of applicant -- failure to hear application. (1) Before the county tax appeal board grants any application or makes any reduction applied for, it shall examine on oath the person or agent making the application with regard to the value of the property of the person. A reduction may not be made unless the applicant makes an application, as provided in 15-15-102, and attends the county board hearing. An appeal of the county board's decision may not be made to the state tax appeal board unless the person or the person's agent has exhausted the remedies available through the county board. In order to exhaust the remedies, the person or the person's agent shall attend the county board hearing. On written request by the person or the person's agent and on the written concurrence of the department, the county board may waive the requirement that the person or the person's agent attend the hearing. The testimony of all witnesses at the hearing must be electronically recorded and preserved for 1 year. If the decision of the county board is appealed, the record of the proceedings, including the electronic recording of all testimony, must be forwarded, together with all exhibits, to the state board. The date of the hearing, the proceedings before the county board, and the decision must be entered upon the minutes of the county board, and the county board shall notify the applicant of its decision by mail within 3 days. A copy of the minutes of the county board must be transmitted to the state board no later than 3 days after the county board holds its final hearing of the year.

- (2) (a) Except as provided in **15-15-201**, if a county board refuses or fails to hear a taxpayer's timely application for a reduction in valuation of property, the taxpayer's application is considered to be granted on the day following the county board's final meeting for that year. The department shall enter the appraisal or classification sought in the application in the property tax record. An application is not automatically granted for the following appeals:
 - (i) those listed in 15-2-302(1); and
- (ii) if a taxpayer's appeal from the department's determination of classification or appraisal made pursuant to 15-7-102 was not received in time, as provided for in 15-15-102, to be considered by the county board during its current session.
- (b) The county board shall provide written notification of each application that was automatically granted pursuant to subsection (2)(a) to the department, the state board, and any affected municipal corporation. The notice must include the name of the taxpayer and a description of the subject property.

(3) The county tax appeal board shall consider an independent appraisal provided by the taxpayer if the appraisal meets standards set by the Montana board of real estate appraisers and the appraisal was conducted within 6 months of the valuation date. If the county tax appeal board does not use the appraisal provided by the taxpayer in conducting the appeal, the county board must provide to the taxpayer the reason for not using the appraisal.

History: Secs. 2113 to 2121 were enacted as Secs. 60 to 70, pp. 96 to 99, L. 1891, appearing as Secs. 3780 to 3790, Pol. C. 1895; re-en. Secs. 2572 to 2582, Rev. C. 1907; Sec. 2575, Rev. C. 1907; re-en. Sec. 2116, R.C.M. 1921; Cal. Pol. C. Sec. 3675; amd. Sec. 3, Ch. 187, L. 1933; re-en. Sec. 2116, R.C.M. 1935; amd. Sec. 3, Ch. 196, L. 1957; amd. Sec. 39, Ch. 405, L. 1973; amd. Sec. 2, Ch. 38, L. 1974; amd. Sec. 4, Ch. 355, L. 1977; R.C.M. 1947, 84-604; amd. Sec. 3, Ch. 630, L. 1979; (2)En. Sec. 4, Ch. 630, L. 1979; amd. Sec. 3, Ch. 471, L. 1987; amd. Sec. 4, Ch. 227, L. 1993; amd. Sec. 2, Ch. 15, Sp. L. November 1993; amd. Sec. 78, Ch. 27, Sp. L. November 1993; amd. Sec. 2, Ch. 134, L. 1997; amd. Sec. 4, Ch. 56, L. 1999; amd. Sec. 4, Ch. 85, L. 1999; amd. Sec. 1, Ch. 533, L. 2005; amd. Sec. 3, Ch. 26, L. 2015; amd. Sec. 24, Ch. 361, L. 2015.

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Montana Code Annotated 2017

TITLE 15. TAXATION
CHAPTER 15. PROPERTY TAX APPEALS
Part 1. County Tax Appeal Board

Appeal To State Tax Appeal Board

15-15-104. Appeal to state tax appeal board. (1) If the appearance provisions of 15-15-103(1) have been complied with, a person or the department, on behalf of the state, or any municipal corporation aggrieved by the action of any county tax appeal board may appeal to the state board under 15-2-301.

(2) If an appeal has been automatically granted by a county tax appeal board pursuant to **15-15-103**(2), the department, on behalf of the state, or any municipal corporation aggrieved by the action may appeal to the state tax appeal board under **15-2-301**. The time for filing an appeal commences on receipt by the department of the written notification required by **15-15-103**(2)(b).

History: Ap. p. Sec. 9, Ch. 3, L. 1923; re-en. Sec. 2122.9, R.C.M. 1935; amd. Sec. 1, Ch. 33, L. 1939; amd. Sec. 54, Ch. 405, L. 1973; amd. Sec. 4, Ch. 38, L. 1974; amd. Sec. 1, Ch. 277, L. 1974; amd. Sec. 1, Ch. 155, L. 1977; amd. Sec. 1, Ch. 249, L. 1977; Sec. 84-709, R.C.M. 1947; Ap. p. by Code Commissioner, 1979; R.C.M. 1947, 84-709(part); amd. Sec. 3, Ch. 15, Sp. L. November 1993; amd. Sec. 2, Ch. 533, L. 2005.

Refund Of Taxes -- Limitations On Refunds

15-16-603. Refund of taxes -- limitations on refunds. (1) Subject to the provisions in subsections (2) and (3), a board of county commissioners shall order a refund:

- (a) on a tax, penalty, interest, or cost paid more than once or erroneously or illegally collected if an appeal pursuant to **15-1-402** was not available;
 - (b) on a tax paid for which a refund is allowed under 15-16-612 or 15-16-613;
- (c) on a tax, penalty, or interest collected as a result of an error in the description or location of real property or improvements or for duplicate taxes paid as determined by the department of revenue;
- (d) on net or gross proceeds tax, centrally assessed property tax, penalty, or interest when the department of revenue notifies the board of county commissioners of an assessment revision completed pursuant to 15-8-601;
- (e) upon entry of a decision either by the district court or by the state tax appeal board under **15-2-306** that has not been appealed to a higher court; or
- (f) on a decision that a refund is payable as a result of a taxpayer prevailing in a motor vehicle tax or fee proceeding under 15-15-201.
 - (2) The taxpayer shall prove that a refund is due under subsection (1)(a) or (1)(b).
- (3) (a) A refund may not be granted under subsection (1)(a) or (1)(b) unless the taxpayer or a representative of the taxpayer files a written claim with the board of county commissioners within 10 years after the date when the second half of the taxes would have become delinquent if the taxes had not been paid.
- (b) The refund required under subsection (1)(c) must be made for 5 tax years or for the duration of the error, whichever period is shorter.
- (c) A refund may not be made under subsection (1)(c) unless the taxpayer allowed the department of revenue access to the taxpayer's property for the purposes of appraising the property.

History: En. Sec. 1, Ch. 539, L. 1993; amd. Sec. 1, Ch. 440, L. 1995; amd. Sec. 5, Ch. 85, L. 1999; amd. Sec. 1, Ch. 46, L. 2013.

Please don't hesitate to give us a call if you have further questions, or consult with your County Attorney for interpretation of this section on behalf of Broadwater County.



Rule: 2.51.307

Rule Title: ORDERS OF THE BOARD

Department: ADMINISTRATION, DEPARTMENT OF Chapter: STATE TAX APPEAL BOARD

Subchapter: County Tax Appeal Boards

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2.51.307 ORDERS OF THE BOARD

(1) The final action of a county tax appeal board upon applications shall be entered in the record by order on forms prescribed by the state tax appeal board. The orders shall specify the changes to be made in the assessment roll.

(2) A signed copy of a board's order shall be mailed to the applicant and to the property assessment division of the department of revenue within 3 days following the signing of the

(3) With respect to personal property, the decision of the county tax appeal board shall be final and binding on all interested parties for the tax year in question unless reversed or modified upon review by the state tax appeal board.

(4) With respect to taxable real property and improvements thereon, the decision of a county tax appeal board shall be final and binding unless reversed or modified upon review by the state tax appeal board. If the decision, of the county tax appeal board is not reviewed by the state tax appeal board, it shall be final and binding on all interested parties for all subsequent tax years unless there is a change in the property itself or circumstances surrounding the property which affect its value. Statutory reappraisal by the department of revenue pursuant to 15-7-111, MCA, is a circumstance affecting the value of real property and improvements thereon.

History: Sec. 15-2-201 MCA; IMP, 15-2-201, 15-2-301, 15-10-304, and 15-15-103 MCA; EMERG, NEW, Eff. 11/5/73; AMD, 1977 MAR p. 723, Eff. 10/25/77; AMD, 1986 MAR p. 1174, Eff. 7/18/86; AMD, 1988 MAR p. 474, Eff. 3/11/88; AMD, 1996 MAR p. 1295, Eff. 5/10/96.

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Effective To

History Notes

5/10/1996

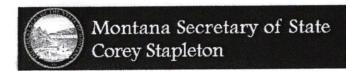
Current

History: Sec. 15-2-201 MCA; IMP, 15-2-201, 15-2-301, 15-10-304, and 15-15-103 MCA; EMERG, NEW, Eff. 11/5/73; AMD, 1977 MAR p. 723, Eff. 10/25/77; AMD, 1986 MAR p. 1174, Eff. 7/18/86; AMD, 1988 MAR p. 474, Eff. 3/11/88; AMD, 1996 MAR p. 1295, Eff. 5/10/96.

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Rule: 2.51.403

Rule Title: DECISION BY THE BOARD

Department: ADMINISTRATION, DEPARTMENT OF Chapter: STATE TAX APPEAL BOARD

Subchapter: State Tax Appeal Board Appeals and Orders

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2.51.403 DECISION BY THE BOARD

(1) With respect to personal property, the decision of the state tax appeal board shall be final and binding upon the parties to the appeal for the tax year in question unless it is reversed or modified by the district court upon judicial review.

(2) With respect to taxable real property and improvements thereon, the decision of the state tax appeal, board shall be final and binding unless reversed or modified by the district court upon judicial review. If the decision of the state tax appeal board is not reviewed by a district court, it is final and binding for subsequent tax years unless there is a change in the property itself or circumstances surrounding the property which affects its value. Statutory reappraisal by the department of revenue pursuant to 15-7-111, MCA, is a circumstance affecting the value of real property and improvements thereon.

History: Sec. 15-2-201 MCA; IMP, 15-2-201, 15-2-301, 15-15-104 MCA; NEW, 1988 MAR p. 474, Eff. 3/11/88.

MAR Notices Effective From

Effective

To

History Notes

3/11/1988

Current

History: Sec. 15-2-201 MCA; IMP, 15-2-201, 15-2-301, 15-15-104 MCA; NEW, 1988 MAR p. 474, Eff. 3/11/88.

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Rule: 42.20.601
Rule Title: DEFINITIONS

Department: REVENUE
Chapter: REAL PROPERTY
Subchapter: Agricultural Land

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42.20.601 DEFINITIONS

The following definitions apply to this subchapter:

- (1) "Agricultural application" means department form AB-3 used by taxpayers to request agricultural classification of land.
- (2) "Agricultural products produced by the land" means crops or forage raised directly in the land's soil and used to support livestock. "Agricultural products produced by the land" does not mean land that is used as a "platform" for agricultural activities. Examples of agricultural activities that do not meet the definition "agricultural products produced by the land" are the feeding of livestock from external sources that allow stocking rates to exceed the carrying capacity or crops produced in potted soil that are not grown directly in the land's soil.
- (3) "Ancillary improvements" means improvements necessary for the production and storage of raw agricultural commodities. These improvements do not include improvements that are used to process, treat, or package raw agricultural commodities into a value-added product, or improvements designed to accommodate and serve the public.
- (4) "Animal unit" means a cow/calf pair, including a mature cow of approximately 1,200 pounds and a calf as old as 6 months, or their equivalent.
- (5) "Animal unit month" means one animal unit grazing for one month. One animal unit month represents the amount of forage needed to properly nourish one animal unit for one month without injurious effect to vegetation on the land.
- (6) "Biological control insect" means an insect that is used to reduce or eliminate noxious weeds by interference with the weed's ecology.
- (7) "Bona fide agricultural operation" means an agricultural enterprise in which the land actually produces agricultural crops defined in <u>15-1-101</u>, MCA, that directly contribute agricultural income to a functional agricultural business.
- (8) "Carrying capacity" means the amount of grazing that a pasture will sustain without injurious effect to vegetative growth due to the quality of the soil and the environment where it occurs.
- (9) "Classification" is the agricultural use of the land. The department classifies agricultural land into one of five agricultural use classes. The department's five agricultural uses are described in ARM 42.20.660 through 42.20.680.
- (10) "Conservation reserve program (CRP)" means a federal farm program that pays agricultural landowners to remove land from crop production on highly erodible soils for a specified period of time.
- (11) "Contiguous parcels of land" means separately described parcels of land under one ownership that physically touch one another or would have touched one another were the acreages not separated by deeded roads and highways, navigable rivers and streams, railroad lines, or federal or state land that is leased from the federal or state government by the taxpayer whose land is physically touching the federal or state land.
- (12) "Denied access or DA land" is a term used by the United States Department of Agriculture Natural Resource Conservation Service (NRCS) to describe lands where they were prohibited from conducting a soil survey by the owner of the land.
- (13) "Domestic grazing land" means all lands devoted to the production of forage from introduced plants that are not part of the original flora of an area that are harvested directly by grazing animals.

- (14) "Effectively prohibit" means to result in the permanent cessation of a bona fide agricultural operation.
- (15) "Income from agricultural production" means the gross amount of income received from the sale of food, feed, fiber commodities, livestock, poultry, bees, biological control insects, fruits, vegetables, and also includes sod, ornamental, nursery, and horticultural crops that are raised, grown, or produced for commercial purposes, income from farm rental, the sale of draft, breeding, dairy, or sporting livestock, the share of partnership or family corporation gross income received from a farming or ranching business entity, or the taxpayer's share of distributable income from an estate or trust involved in an agricultural business. When the income from agricultural production is used to qualify land for agricultural classification, it must be reportable income for income tax purposes.
- (a) Wages received as a farm employee or wages received from a farm corporation are not gross income from farming.
- (b) A bona fide agricultural operation may combine the income of more than one parcel to meet the income requirements. The parcels must be dependent upon each other in the agricultural operation as a whole.
- (16) "Land use" means land placed into a certain type of service or utilization, such as the agricultural uses described in ARM 42.20.660 through 42.20.680.
- (17) "Lease" means an agreement transferring certain rights to a lessee (tenant), including possession, while still allowing the lessor (landlord) to retain fee ownership.
- (18) "Livestock" as defined in <u>15-1-101</u>, MCA, means cattle, sheep, swine, goats, horses, mules, asses, llamas, alpacas, bison, ostriches, rheas, emus, and domestic ungulates.
- (19) "Native grazing land" means all lands devoted to the production of forage from native or naturalized plants that are harvested directly by grazing animals.
- (20) "Noncontiguous parcels of land" means parcels of land under one ownership that are physically separated from one another by land in a different ownership other than deeded roads and highways, navigable rivers and streams, railroad lines, or federal or state land that is leased from the federal or state government by the taxpayer whose land is physically touching the federal or state land.
- (21) "Nonqualified agricultural land" means parcels of land of 20 acres or more but less than 160 acres under one ownership that are not eligible for valuation, assessment, and taxation as agricultural land under 15-7-202(1), MCA.
- (22) "Not completed or NOTCOM land" is a term used by the Natural Resource Conservation Service to describe lands where they have not completed a soil survey or have completed the soil survey but the results have not been published for public use.
- (23) "Owner" means that the applicant and owner of record are the same individual, corporation, partnership, sole proprietorship, or trust.
 - (24) "Parcel" means a tract or plot of land distinguishable by ownership boundaries.
- (25) "Pertinent" means scientific, verifiable information relating directly to a specific geographical area that could affect the productive capacity of the land.
- (26) "Poultry" means domesticated birds raised for eggs, meat, or other commercially marketable products that are not included in the definition of livestock as described in <u>15-1-101</u>, MCA
- (27) "Productive capacity or productivity" means the ability of a soil to produce crops or forage under the environment where it occurs and under a specified system of management. The productive capacity can change over time due to changes in soil fertility or more efficient farming practices and equipment.
- (28) "Productive capacity value and productivity value" are synonymous and interchangeable terms for the per-acre value of the agricultural land based on its productive capacity. The productive capacity value is determined using the formula described in 15-7-201, MCA, and is further identified in ARM 42.20.660, 42.20.665, 42.20.670, 42.20.675, and 42.20.680.
- (29) "Residence" means all conventionally constructed homes, as well as all mobile homes and manufactured housing, that may serve as living quarters for one or more individuals or a family. The occupancy of the residence shall be irrelevant.
 - (30) "Residential" means land used for the purpose of family housing.
- (31) "Residential use only" means land that allows buildings for the purpose of family housing and restricts commercial or industrial buildings.
- (32) "Site-specific" means data associated within a defined geographic area, usually composed of similarly situated parcels of land characterized by reoccurring patterns of soils,

geology, climate, water resources, and land use. Site-specific data may refer to one continuous area or several separate nearby areas. Site-specific data rarely references an individual ownership or an individual parcel of land.

(33) "Sole proprietorship" for the purposes of qualifying land for agricultural assessment and taxation under the provisions of <u>15-7-202</u>, MCA, and ARM <u>42.20.625</u>, means an ownership of agricultural land in the name of one or more individuals which can be any of the following: grandparent(s), parent(s), spouse, sibling(s), children, stepchildren, aunt(s), uncle(s) and first generation cousin(s).

(34) "Under one ownership" means one party owns two or more parcels of land when the title is in the party's name or names; the party has received title in the parcels by a transferring instrument such as a deed, contract for deed, or judgment; and the party has the present right to possess and use the parcels.

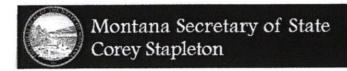
History: <u>15-7-111</u>, MCA; <u>IMP</u>, <u>15-1-101</u>, <u>15-6-133</u>, <u>15-7-201</u>, <u>15-7-202</u>, MCA; <u>NEW</u>, 2003 MAR p. 1888, Eff. 8/29/03; <u>AMD</u>, 2004 MAR p. 3160, Eff. 12/17/04; <u>AMD</u>, 2007 MAR p. 119, Eff. 12/22/06; <u>AMD</u>, 2010 MAR p. 549, Eff. 2/26/10; <u>AMD</u>, 2014 MAR p. 2994, Eff. 12/12/14; <u>AMD</u>, 2016 MAR p. 2065, Eff. 1/1/17.

MAR Notices	Effective From	Effective To	History Notes			
<u>42-2-956</u>	1/1/2017	Current	History: <u>15-7-111</u> , MCA; <u>IMP</u> , <u>15-1-101</u> , <u>15-6-133</u> , <u>15-7-201</u> , <u>15-7-202</u> , MCA; <u>NEW</u> , 2003 MAR p. 1888, Eff. 8/29/03; <u>AMD</u> , 2004 MAR p. 3160, Eff. 12/17/04; <u>AMD</u> , 2007 MAR p. 119, Eff. 12/22/06; <u>AMD</u> , 2010 MAR p. 549, Eff. 2/26/10; <u>AMD</u> , 2014 MAR p. 2994, Eff. 12/12/14; <u>AMD</u> , 2016 MAR p. 2065, Eff. 1/1/17.			
42-2-924	12/12/2014	1/1/2017	History: <u>15-7-111</u> , MCA; <u>IMP</u> , <u>15-1-101</u> , <u>15-6-133</u> , <u>15-7-201</u> , <u>15-7-202</u> , MCA; <u>NEW</u> , 2003 MAR p. 1888, Eff. 8/29/03; <u>AMD</u> , 2004 MAR p. 3160, Eff. 12/17/04; <u>AMD</u> , 2007 MAR p. 119, Eff. 12/22/06; <u>AMD</u> , 2010 MAR p. 549, Eff. 2/26/10; <u>AMD</u> , 2014 MAR p. 2994, Eff. 12/12/14.			
42-2-815	2/26/2010	12/12/2014	History: <u>15-7-111</u> , MCA; <u>IMP</u> , <u>15-1-101</u> , <u>15-6-133</u> , <u>15-7-201</u> , <u>15-7-202</u> , MCA; <u>NEW</u> , 2003 MAR p. 1888, Eff. 8/29/03; <u>AMD</u> , 2004 MAR p. 3160, Eff. 12/17/04; <u>AMD</u> , 2007 MAR p. 119, Eff. 12/22/06; <u>AMD</u> , 2010 MAR p. 549, Eff. 2/26/10.			
	12/22/2006	2/26/2010	History: <u>15-7-111</u> , MCA; <u>IMP</u> , <u>15-1-101</u> , <u>15-6-133</u> , <u>15-7-201</u> , <u>15-7-202</u> , MCA; <u>NEW</u> , 2003 MAR p. 1888, Eff. 8/29/03; <u>AMD</u> , 2004 MAR p. 3160, Eff. 12/17/04; <u>AMD</u> , 2007 MAR p. 119, Eff. 12/22/06.			
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V

Rule: 42.20.680
Rule Title: GRAZING LAND

Department: REVENUE
Chapter: REAL PROPERTY

Subchapter: Agricultural Land

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42.20.680 GRAZING LAND

(1) Grazing land productivity values for each year are:

- (a) Calculated by using the formula defined in <u>15-7-201</u>, MCA, where the agricultural land productivity valuation formula is:
 - (i) V = I/R;
 - (ii) V is the productivity value of the agricultural land;
- (iii) I is the net income attributed to the acre of land using an adjusted average private grazing lease rate; and
- (iv) R is the capitalization rate or the rate that converts an ongoing income stream into an estimate of value.
 - (b) The per acre grazing land value is calculated by:
- (i) multiplying the average private grazing lease per Animal Unit Month (AUM) by 25 percent to determine the landlord's share of expenses;
- (ii) subtracting the landlord's share of expenses from the average private grazing lease per AUM to determine the adjusted gross income per AUM;
- (iii) multiplying the adjusted gross income per AUM by the productivity of the grazing land expressed as AUMs per acre to determine net income; and
 - (iv) dividing the net income by the cap rate identified in 15-7-211, MCA.

History: <u>15-1-201</u>, MCA; <u>IMP</u>, <u>15-7-103</u>, <u>15-7-201</u>, MCA; Eff. 12/31/72; <u>AMD</u>, Eff. 2/3/77; <u>AMD</u>, 1985 MAR p. 2023, Eff. 12/27/85; <u>AMD</u>, 1993 MAR p. 3048, Eff. 12/24/93; <u>TRANS</u> from ARM <u>42.20.142</u> and <u>AMD</u>, 2003 MAR p. 1888, Eff. 8/29/03; <u>AMD</u>, 2006 MAR p. 3103, Eff. 12/22/06; <u>AMD</u>, 2008 MAR p. 1822, Eff. 8/29/08; <u>AMD</u>, 2010 MAR p. 549, Eff. 2/26/10; <u>AMD</u>, 2014 MAR p. 2994, Eff. 12/12/14; <u>AMD</u>, 2016 MAR p. 2341, Eff. 1/1/17.

MAR Notices	Effective From	Effective To	History Notes
42-2-966	1/1/2017	Current	History: 15-1-201, MCA; IMP, 15-7-103, 15-7-201, MCA; Eff. 12/31/72; AMD, Eff. 2/3/77; AMD, 1985 MAR p. 2023, Eff. 12/27/85; AMD, 1993 MAR p. 3048, Eff. 12/24/93; TRANS from ARM 42.20.142 and AMD, 2003 MAR p. 1888, Eff. 8/29/03; AMD, 2006 MAR p. 3103, Eff. 12/22/06; AMD, 2008 MAR p. 1822, Eff. 8/29/08; AMD, 2010 MAR p. 549, Eff. 2/26/10; AMD, 2014 MAR p. 2994, Eff. 12/12/14; AMD, 2016 MAR p. 2341, Eff. 1/1/17.
42-2-924	12/12/2014	1/1/2017	History: 15-1-201, MCA; IMP, 15-7-103, 15-7-201, MCA; Eff. 12/31/72; AMD, Eff. 2/3/77; AMD, 1985 MAR p. 2023, Eff. 12/27/85; AMD, 1993 MAR p. 3048, Eff. 12/24/93; TRANS from ARM 42.20.142 and AMD, 2003 MAR p. 1888, Eff. 8/29/03; AMD, 2006 MAR p. 3103, Eff. 12/22/06; AMD, 2008 MAR p. 1822, Eff. 8/29/08; AMD, 2010 MAR p. 549, Eff. 2/26/10; AMD, 2014 MAR p. 2994, Eff. 12/12/14.
42-2-815	2/26/2010	12/12/2014	History: <u>15-1-201</u> , MCA; <u>IMP</u> , <u>15-7-103</u> , <u>15-7-201</u> , MCA; Eff. 12/31/72; <u>AMD</u> , Eff. 2/3/77; <u>AMD</u> , 1985 MAR p. 2023, Eff. 12/27/85; <u>AMD</u> , 1993 MAR p. 3048, Eff. 12/24/93; <u>TRANS</u> from ARM <u>42.20.142</u> and <u>AMD</u> , 2003 MAR p. 1888, Eff. 8/29/03; <u>AMD</u> , 2006 MAR p. 3103, Eff. 12/22/06; <u>AMD</u> , 2008 MAR p. 1822, Eff. 8/29/08; <u>AMD</u> , 2010 MAR p. 549, Eff. 2/26/10.

42-2-794 8/29/2008 2/26/2010

History: <u>15-1-201</u>, MCA; <u>IMP</u>, <u>15-7-103</u>, <u>15-7-201</u>, MCA; Eff. 12/31/72; <u>AMD</u>, Eff. 2/3/77; <u>AMD</u>, 1985 MAR p. 2023, Eff. 12/27/85; <u>AMD</u>, 1993 MAR p. 3048, Eff. 12/24/93; <u>TRANS</u> from ARM <u>42.20.142</u> and <u>AMD</u>, 2003 MAR p. 1888, Eff. 8/29/03; <u>AMD</u>, 2006 MAR p. 3103, Eff. 12/22/06; AMD, 2008 MAR p. 1822, Eff. 8/29/08.

12/22/2006 8/29/2008

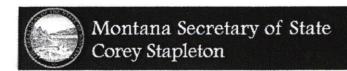
History: **15-1-201**, MCA; <u>IMP</u>, **15-7-103**, **15-7-201**, MCA; Eff. 12/31/72; <u>AMD</u>, Eff. 2/3/77; <u>AMD</u>, 1985 MAR p. 2023, Eff. 12/27/85; <u>AMD</u>, 1993 MAR p. 3048, Eff. 12/24/93; <u>TRANS</u> from ARM **42.20.142** and <u>AMD</u>, 2003 MAR p. 1888, Eff. 8/29/03; <u>AMD</u>, 2006 MAR p. 3103, Eff. 12/22/06.

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V

Rule: 42.20.683

Rule Title: SPECIALTY AND UNIQUE CROPS

Department: REVENUE
Chapter: REAL PROPERTY
Subchapter: Agricultural Land

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Latest version of the adopted rule presented in Administrative Rules of Montana (ARM):

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42.20.683 SPECIALTY AND UNIQUE CROPS

- (1) An applicant applying for agricultural land classification must prove that the land indicated in the application actually produced an agricultural crop as defined in <u>15-1-101</u>, MCA, and that the crop produced \$1,500 in annual agricultural income based on parcel size as set forth in ARM <u>42.20.620</u>. The agricultural land, indicated in the application, must actually produce the crop(s).
- (2) Poultry or game birds must be raised in an unconfined area receiving their general dietary requirements from the land. Game birds raised in a building, cage, or enclosed area, are considered activities that are not supported and produced by the land. Land used for poultry and game birds raised in this manner are not eligible for consideration as agricultural land.
- (3) The sale of honey and other products from bees will be considered agricultural income. For valuation as agricultural land, the owner of the land must provide proof that the landowner is registered with the Montana Department of Agriculture as an apiary.
- (4) The sale of biological control insects will be considered agricultural income if the insects are supported solely from noxious weeds grown on the land indicated on the application.
- (5) A garden or produce farm must grow plants or nursery stock in the ground to be considered agriculture if the provisions of (6) are met. Plants not grown in or nourished by the land are not considered agricultural production and the income generated by those plants is not considered agricultural income for the purposes of this rule. Examples of ineligible plants include, but are not limited to, trees grown in self-contained pots or burlap bags placed in or on the ground and plants grown in flats located in a greenhouse.
- (6) For valuation as agricultural land, the owner of land used as a garden or produce farm must provide proof that the garden or produce farm:
 - (a) is cultivated for weeds and grass; and
- (b) is managed according to accepted husbandry practices, including necessary fencing and a watering system.
- (7) The sale of Christmas trees will be considered agricultural income if the provisions of (8) are met.
 - (8) For valuation as agricultural land, the owner of land must provide proof that all trees are:
 - (a) cultivated under accepted, proven husbandry practices; and
 - (b) sheared on a regular basis.
- (9) The property owner must include with the application documentation sufficient to prove that the property produces and the owner or the owner's agent markets at least \$1,500 in gross annual income.
 - (10) A fruit tree orchard will be considered agriculture if the provisions of (11) are met.
- (11) For valuation as agricultural land, the owner of land must provide proof that the orchard is maintained using accepted fruit tree husbandry practices including fencing and a watering system.
- (12) The property owner must include with the application documentation sufficient to prove that the orchard produces and the owner or the owner's agent markets at least \$1,500 in gross annual income once the trees reach production maturity.
 - (13) A vineyard shall be considered agriculture if the provisions of (14) are met.
 - (14) For valuation as agricultural land, the owner of land must prove that:
 - (a) the vineyard is maintained for weeds and grass;
 - (b) all vines are pruned; and

- (c) the vineyard is maintained with accepted husbandry practices, including trellising and staking.
- (15) Land qualifying under this rule is valued at the highest productivity level of nonirrigated continuously cropped farm land as established by the department.

History: <u>15-1-201</u>, MCA; <u>IMP</u>, <u>15-7-201</u>, <u>15-7-202</u>, <u>15-7-203</u>, <u>15-7-206</u>, <u>15-7-207</u>, <u>15-7-208</u>, <u>15-7-209</u>, <u>15-7-210</u>, <u>15-7-212</u>, MCA; <u>NEW</u>, 2014 MAR p. 2994, Eff. 12/12/14; <u>AMD</u>, 2016 MAR p. 2065, Eff. 1/1/17.

MAR Notices	Effective From	Effective To	History Notes
42-2-956	1/1/2017	Current	History: <u>15-1-201</u> , MCA; <u>IMP</u> , <u>15-7-201</u> , <u>15-7-202</u> , <u>15-7-203</u> , <u>15-7-206</u> , <u>15-7-207</u> , <u>15-7-208</u> , <u>15-7-209</u> , <u>15-7-210</u> , <u>15-7-212</u> , MCA; <u>NEW</u> , 2014 MAR p. 2994, Eff. 12/12/14; <u>AMD</u> , 2016 MAR p. 2065, Eff. 1/1/17.
42-2-924	12/12/2014	1/1/2017	History: $\underline{15-1-201}$, MCA; $\underline{\text{IMP}}$, $\underline{15-7-201}$, $\underline{15-7-202}$, $\underline{15-7-203}$, $\underline{15-7-206}$, $\underline{15-7-208}$, $\underline{15-7-209}$, $\underline{15-7-210}$, $\underline{15-7-212}$, MCA; $\underline{\text{NEW}}$, 2014 MAR p. 2994, Eff. 12/12/14.

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VOLUME NO. 35

Opinion No. 16

COUNTIES — Tax appeal board, membership; COUNTIES — Tax appeal board, travel and per diem; OFFICES AND OFFICERS — County tax appeal board, membership; OFFICES AND OFFICERS — County tax appeal board, travel and per diem; TAXATION — County tax appeal board, membership; TAXATION — County tax appeal board, travel and per diem. Article VIII, section 7, Constitution of Montana, 1972; sections 59-538, 59-801, and 84-601, R.C.M. 1947.

- HELD: 1. County commissioners cannot appoint themselves to the county tax appeal boards created in section 84-601, R.C.M. 1947.
 - 2. Members of the county tax appeal boards created in section 84-601, R.C.M. 1947, are only entitled to travel and per diem as provided in sections 59-538 and 59-801, R.C.M. 1947.

June 26, 1973

Mr. Ray J. Wayrynen, Chairman State Board of Equalization Sam W. Mitchell Building Helena, Montana 59601

Dear Mr. Wayrynen:

You have requested my opinion on the following questions:

- 1. By section 84-601, R.C.M. 1947, as amended by Chapter 405, Laws of 1973 (H.B. 16), may the county commissioners of the respective counties of Montana appoint themselves to the newly-created county tax appeal boards?
- 2. Pursuant to section 84-601, R.C.M. 1947, as amended by Chapter 405, Session Laws of 1973, to what travel and per diem are members of county tax appeal boards entitled while in session?

Your first question involves an interpretation of Article VIII, section 7, Constitution of Montana, 1972, which provides:

The legislature shall provide independent appeal procedures for taxpayer grievances about appraisals, assessments, equalization, and taxes. The legislature shall include a review procedure at the local government unit level. (Emphasis supplied)

Pursuant to this constitutional directive, the Forty-third Legislative Assembly enacted section 36 of Chapter 405, Session Laws of 1973, which provides in pertinent part:

The board of county commissioners of each county shall appoint the three (3) member county tax appeal board. The members of each tax

commissioners cannot appoint themselves to the county tax appeal board created in section 36 of Chapter 405, Session Laws of 1973.

Section 36 of Chapter 405, supra, provides that members of the county tax appeal board "shall receive travel expenses and per diem only when the county tax appeal board is in session ...". The statute does not provide a specific amount of travel or per diem expense to be paid; therefore, it is necessary to turn to the general state travel and per diem statutes. Section 59-801, R.C.M. 1947, sets forth the mileage rate for public officers in the state. As amended, this statute provides that public officers are entitled to 12¢ per mile when using their own automobiles in the performance of official duties. Section 59-538, R.C.M. 1947, sets forth the per diem allowance for persons in state service. Pursuant to section 84-601, supra, travel and per diem of county tax appeal boards are paid by the state tax appeal board through a legislative appropriation. As the state board is responsible for paying travel and per diem expenses, section 59-538, supra, would apply. Section 59-539, R.C.M. 1947, sets forth the method of computation of the per diem allowance. Based on the foregoing discussion, the county tax appeal boards should be reimbursed for travel and per diem expenses pursuant to the provisions of sections 59-538 and 59-801, supra. If members are to receive any other amount for travel and per diem, legislative action to so provide is necessary.

THEREFORE, IT IS MY OPINION:

- County commissioners may not appoint themselves to the county tax appeal board established pursuant to section 36 of Chapter 405, Session Laws of 1973; and
- 2. Members of the county tax appeal board established pursuant to section 36, Chapter 405, Session Laws of 1973, are entitled only to travel and per diem expense reimbursement pursuant to the provisions of 59-538 and 59-801, R.C.M. 1947.

Very truly yours, ROBERT L. WOODAHL Attorney General

VOLUME NO. 35

Opinion No. 17

UNIVERSITY SYSTEM — Residency determination statutes not unconstitutional; CONSTITUTIONAL LAW — Statutes regulating residency determination for tuition and fees in Montana university system not unconstitutional. Fourteenth Amendment, United States Constitution; sections 75-8701 through 75-8704, R.C.M. 1947.

VOLUME NO. 42 OPINION NO. 61

notice of meetings; CONNAIES - Deliberations of county tax appeal board,

board, notice of meetings; OBEN WEETINGS - Deliberations of county tax appeal

PROPERTY, REAL - Deliberations of county tax appeal

bublic OfFICERS - Deliberations of county tax appeal

board, notice of meetings; RIGHT TO KNOW - Deliberations of county tax appeal

TAXATION AND REVENUE - Deliberations of county tax board, notice of meetings;

appeal board, notice of meetings; 2-3-202, 2-3-203, MONTANA CODE ANNOTATED - Sections 2-3-202, 2-3-203,

MONTANA CONSTITUTION - Article II, section 9; 12-12-101 to 12-12-103:

opinions of the Attorney General - 42 Op. Att'y Gen. No. 33 (1979).

of public disclosure. individual privacy clearly exceed the merits individual privacy and that the demands of the discussion relates to a matter of unless the presiding officer determines that property valuation must be open to the public regarding an application for reduction in The deliberations of a county tax appeal board

.leaqqe na noqu convening of a quorum to hear, discuss, or act of a county tax appeal board, including the board's deliberations which involve the 2. Adequate notice must be given of any meeting

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OPINIONS OF THE ATTORNEY GENERAL

3 February 1988

Mike Salvagni Gallatin County Attorney Law and Justice Center 615 South 16th Street Bozeman MT 59715

Dear Mr. Salvagni:

You requested my opinion on two issues:

I. May a county tax appeal board close to the public its deliberations regarding an application for reduction in valuation of property?

2). If such deliberations are to be open to the public, what notice procedures should be followed if the deliberations are held at a time different from the examination required by section 15-15-103, MCA?

The county tax appeal boards described in section 15-15-101, MCA, are comprised of three county residents appointed by the county commissioners. These residents are paid for their work on the board with state funds. A county tax app all board is charged with the duty of hearing all taxpayers' appeals from property tax assessments. § 15-15-101, MCA. It is given the power to change an assessment or to fix an assessment at some cother level. § 15-15-101(3), MCA.

Section 15-15-102, MCA, provides that, before a county tax appeal board can make a reduction in property valuation, a written application must be filed by the party affected by the valuation. That section states:

No reduction may be made in the valuation of property unless the party affected or his agent makes and files with the county tax appeal board on or before the first Monday in June or 15 days after receiving a notice of classification and appraisal from the classification and appraisal from the application therefor. The application therefor. The application shall state the post-office address of the applicant, shall specifically describe the applicant, and shall state the facts upon which it is claimed such reduction should be made.

Section 15-15-103, MCA, requires that the board must examine on oath, at a recorded hearing, any person making such an application. You have asked whether the deliberations conducted by a county tax appeal board, following such examination of applicants, may be closed to the parties involved and the public.

Op. Att'y Gen. No. 42 (1987). boards as referred to in section 2-3-203, MCA. 266 42 assessments. Thus they are public or governmental the public and, thereafter, fixing property tax assigned the governmental task of receiving input from county tax appeal boards are state-funded boards funds must be open to the public." As stated above, whole or in part by public funds or expending public the state or organizations or adencies supported in agencies of the state, or any political subdivision of governmental bodies, boards, pniegna' commitations' the meetings 2-3-203, MCA, found in Montana's open meeting law, requires that the meetings of all "public or government and its subdivisions." Likewise, section provides that a person has the right to observe the provides of state Article II, section 9 of the Montana Constitution

The fact that a county tax appeal board has finished hearing testimony pursuant to scction 15-15-103, MCA, does not mean that its meeting has necessarily ended. The crucial question is whether there is still a "meeting," as defined in section 2-3-202, MCA.

As used in this part, "meeting" means the convening of a quorum of the constituent membership of a public agency or association described in 2-3-203, whether corporal or by discuss, or act upon a matter over which the agency has supervision, control, jurisdiction, or advisory power.

Thus, where a board's deliberations involve the convening of a quorum to hear, discuss, or act upon an appeal, there is a "meeting" within the above definition, and the public must be allowed. The exception, of course, is where the presiding officer of a meeting makes a determination, according to section 2-3-203(3), MCA, that the demands of individual privacy require that the meeting be closed. See Mont. Const. art. II, § 9.

I previously held in 38 Op. Att'y Gen. No. 33 at 115 (1979) that the deliberations of the Montana Human Rights Commission, a quasi-judicial body, are subject to

OPINIONS OF THE ATTORNEY GENERAL

Montana's open meeting law. In addressing the concern that a determination regarding individual rights be conducted in a "judicial atmosphere," I stated:

Our Open Meeting Act specifically addresses this problem by allowing the closure of any proceeding in which the individual's right to privacy outweighs the public's right to know. In such cases, which may be common before the Human Rights Commission, the attributes of a "judicial atmosphere" can be preserved. the case of other quasi-judicial bodies which consider questions of broader public impact, the expansive intent in our Constitution and statutes favoring public disclosure can be preserved. If this inhibits frank discussion of views and issues by board members, that is a price demanded by our Constitution and our Legislature so that the people of Montana do not "abdicate their sovereignty to the agencies which serve them."

38 Op. Att'y Gen. No. 33 at 118.

Such reasoning is applicable to the deliberations of a county tax appeal board. Even if characterized as a quasi-judicial board, its meetings must still be open generally, and may be closed after a determination regarding individual privacy, pursuant to section 2-3-203, MCA. And even if a meeting is closed to the general public, the taxpayer who is appealing has the right to attend. See Jarussi v. Board of Trustees, 40 St. Rptr. 720, 725, 664 P.2d 316, 320 (1983).

Your second question relates to notice to the public of deliberations, where such deliberations take place at a date and/or time different from when testimony was heard pursuant to section 15-15-103, MCA. Section 15-15-101, MCA, specifically sets out the notice requirements for a county tax appeal board hearing:

(3) In connection with any such appeal, the county tax appeal board may change any assessment or fix the assessment at some other level. The county clerk shall publish a notice to taxpayers, giving the time the county tax appeal board will meet to hear protests concerning assessments and the latest date the county tax appeal board may take applications for such hearings. The notice shall be published in a newspaper if any is printed in the county or, if none, then in such manner as the board may direct. The notice shall be published at least 7 days

OPINIONS OF THE ATTORNEY GENERAL

prior to the first meeting of the county tax appeal board.

Therefore, a county tax appeal board must follow the requirements of section 15-15-101(3), MCA, in giving notice of a meeting to hear protests. Such notice requirements may also apply when the board meets to discuss and deliberate about such protests and any applications made pursuant to section 15-101, MCA.

Montana's open meeting law also requires that adequate notice be given to the public. Board of Trustees v. County Commissioners, 186 Mont. 148, 606 p.2d 1069 15-15-151(3), MCA, but the board meets at another time and/or place after initially hearing a protest, adequate notice must again be given.

THEREFORE, IT IS MY OPINION:

The deliberations of a county tax appeal board regarding an application for reduction in property valuation must be open to the public unless the presiding officer determines that the discussion relates to a matter of individual privacy and that the demands of individual privacy clearly exceed the merits of of public disclosure.

Adequate notice must be given of any meeting of a county tax appeal board, including the board's deliberations which involve the convening of a quorum to hear, discuss, or act

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Very truly yours,

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New tax law affecting returns across Montana

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If you went out and bought a new TV on a credit card in anticipation of getting the same size tax return as last year, you might want to save the receipt.

In Montana and in Missoula, as across the United States, individual taxpayers are seeing smaller amounts of money in their federal tax returns compared to last year. The average return is down 8.7 percent so far compared to last year, according to the IRS.

That's because, according to Beau Johnson, a certified public accountant at Tompkins & Peters CPAs P.C. in Missoula, the IRS withheld less money from people's paychecks last year. It was part of the new tax law, passed by Congress last year and signed into law by President Donald Trump, called the Tax Cuts and Jobs Act.

"We are seeing a little bit less in refunds for individuals," Johnson explained. "There is less federal withholding, so the refund shrunk that way. They are paying less in taxes but getting less in refunds."

In the past, a person's withholdings — the amount of taxes pulled from a paycheck each pay period — were often more than what the person actually owed the IRS. And so at the end of the year the IRS would send back what had been over-collected as a refund.

Under the new law, the withholdings shrank, leaving more money in people's paychecks. In return, it has decreased the amount people will receive back from the IRS this spring. In some cases, it means people may actually owe the IRS taxes.

Anyone who didn't fill out a W4 form last year and change the amount that the government withholds from their paycheck could see less of a refund.

"The idea was people should see it in their paychecks, but over 52 weeks sometimes it's hard to notice what you're getting," Johnson said.

The lower refunds his clients have been seeing have been from all levels of income, he added.

Johnson said the vast majority of people in the country haven't gotten their refunds yet, because the government shutdown in January delayed things a few weeks.

He said the new tax law was advantageous to small business owners, who get a larger qualified business income deduction now.

There have been many national stories of taxpayers expressing surprise and dismay that their income tax returns were smaller than expected or that they owed taxes instead of qualifying for a refund.

In Billings, tax accountants haven't seen the same outrage — for the most part — but they are seeing some consternation.

Colleen Black, who owns an accounting firm on Central Avenue in Billings, said her clients have been mostly pleased as she's explained that with the changes to the law their tax savings have come incrementally through the year as opposed to in one lump sum as a refund.

"They're in a much better position," she said.

What's causing the dissonance between taxpayers and their refunds is the way income tax withholdings are calculated under the new law. The law also changed the way some business deductions are handled. Some business expense deductions for those who are self-employed were elimi-

nated altogether, King said.
For example, King has a client who is a salesman and uses dinners and entertainment as a way to attract and keep potential clients. Those expenses are no longer deductible.

"That guy had to eat about \$4,000" in deductions, King said.

The same is true for self-employed contractors who buy their own tools or freelance workers who make purchases to make themselves more marketable.

"Those guys are the ones I feel sorry for," he said.

The silver lining is that most people are paying less taxes overall, Black said. On top of that, the new law increased child tax credits and so those adults with dependent children still at home will see an increase in that portion of their refund.

Aside from lowering taxes, the Tax Cuts and Jobs Act also had the stated goal of simplifying the tax code for individuals in order to make it easier to file. As a result it appears more people are doing their own taxes this year.

"We're not seeing as many of the easy returns," King said.

> Helena IA 2/22/2019

Confused by misinformation? City breaks down facts of budgeting, taxing process

MISSOULA CURRENT AUGUST 27, 2018

If the rhetoric and misinformation surrounding this year's municipal budgeting process has you confused, you're not alone. It's a highly political process, after all, with many different philosophies at play.

But there's only one set of facts, and those are rooted in the raw numbers.

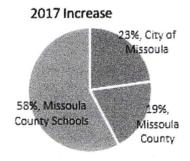
In an effort to help answer some of the basic and recurring questions in this year's budgeting process, the city of Missoula has provided some answers and graphs to get you started.

Budgeting is a hard process to follow, and even harder when you have to wade through bad information. Give this a read and see if it helps – and direct any further questions to the city.

Why did my property tax bill increase last year?

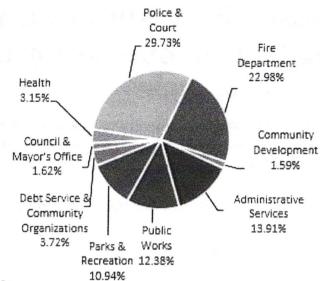
Several factors were at work last year. The Montana Department of Revenue's new appraisals of property in Missoula reflected significant increases in real estate value for many properties. The city lowered property taxes last year, but many people paid more because their homes were worth more.

Voter-approved bonds and tax increases from other jurisdictions also played a role.



Taxing Jurisdiction	2016	2017	increase
City of Missoula	\$910	\$1,024	\$114
Missoula County	\$545	\$631	\$96
Missoula County Schools	\$1,017	\$1,305	\$288

Taxes for a home with a 2017 market value of \$267,800.



Here's where the city's tax money goes:

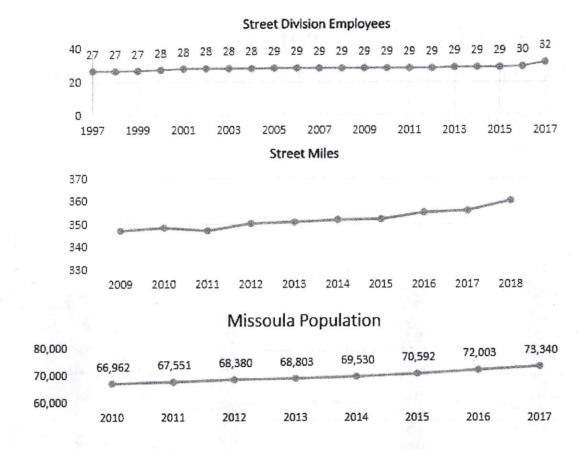
How is this year different?

The value of property in Missoula was lower than we expected. This was partly because of changes in the way the state values and taxes some large entities and because of a large number of taxpayers protesting their taxes and receiving lower tax bills from the state – all unexpected events.



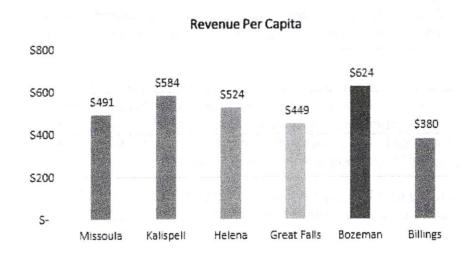
How did the city respond to the decreased revenue?

New requests from city departments were pared down to only a few: two additional police officers and a study to understand how to expand police staff in the most effective way; the increase of a part-time Street Division employee to full-time; about \$50,000 to the Parks budget for taking care of our parks; and a few miscellaneous enhancements needed to maintain services in several departments.



How do Missoula's taxes compare to other Montana cities?

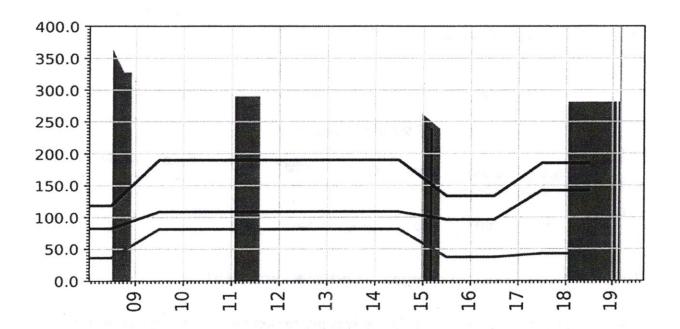
The amount of tax revenue Missoula receives per resident is in line with our peer cities.



Real Estate Market Trends

How closely do property tax valuations track a home's historical sales activity?

BY RICHARD DEWS // MAR 13, 2019 FLATHEAD BEACON



How closely do property tax valuations track a home's historical sales activity? Is there value in looking back, for sales activity and discerned trends? Here's a custom chart showing the last decade of sales efforts for an undisclosed Flathead Valley home (see chart). The left (vertical) axis shows price in thousands of dollars. The bottom (horizontal) axis shows the calendar (small hashes are months), starting in 2008 and progressing to the present date (darker vertical gray line at far right).

Red polygons show listing periods where the house was on the market, failed to sell and the listings expired. The green polygon is the only listing during which this home was successfully sold (diagonal decrease at its top shows price drop amount). The black vertical line shows the date at which it went under contract. The horizontal lines represent historic tax valuations, green being land, blue being building(s), and black being combined total valuations.

Such data is important whether buying or selling, to put values in context. This is the kind of data a Realtor can access and present to you – you won't find it on Zillow.

Lower-than-expected state tax values rock Missoula's budget

Missoulian Eve Byron Aug 9, 2018

The city of Missoula is scrambling to make last-minute changes to its annual budget — which could include an increase in property taxes — after the Montana Department of Revenue recalculated the tax burden for railroads, pipeline companies, air carriers and the telecommunication industry.

Missoula County also will need to make some tough choices, after the anticipated increase in the value of a mill, which is based on a property's value, came in lower than expected.

Property taxes are calculated based on the value of a mill. The construction surge across Montana typically would increase the value of the property and subsequently of the mill. In Missoula County, for instance, the projected value of one mill for the fiscal year 2019 budget was \$224,587. Last year, the value of a mill was \$219,323.

Instead, DOR information released to cities and counties Monday put Missoula County's mill value at \$220,300. That presented a \$693,657 shortfall in the county's preliminary budget.

The saving grace for the county was that the Sheriff's Retirement System voted last month to discontinue paying into Social Security. That reduced the amount of money the county paid for Social Security for those employees by \$725,619.

County Commissioner Jean Curtiss called that move "fortuitous," but added that the county and city are meeting with representatives from the DOR on Friday to discuss the matter. They also have about 100 budget increase requests that they'll scrutinize more closely.

"It was a shock for us," added Commissioner Cola Rowley.

Missoula's City Council has been having budget presentations for most of the summer, but Mayor John Engen was prepared to present the overall city budget to the council on Wednesday. He canceled that portion of the meeting on Tuesday after city officials learned Monday that the value of the city mill was put at \$121,730, slightly lower than last year's valuation.

Dale Bickell, the city's chief administrative officer, said they're confused by the drop in value, especially since the number of building permits being issued has doubled in recent years. City staff are looking at the certified valuations of about 22,000 parcels within the city of Missoula, and are trying to figure out how the property values for some of those parcels decreased.

"We're not challenging their evaluations; we're not asking them to prove it, but trying to figure out why it changed," Bickell said on Thursday. "There should be a reason why it happened — if the underlying owner protested the appraisal, if there was a demolition — there has to be some

Kristan Barbour, a taxpayer advocate at DOR, noted that in the telecommunications industry, more robust competition during the past few years due to increasing market saturation led to a "contraction in values" for the current tax year.

"For example, cell phone plans have gotten continuously cheaper over time or at least are offering more benefits for the same amount of money," Barbour wrote in an email to the Missoulian. "This is great for consumers but is an indication of deteriorating margins for companies that operate in the industry. The sector is still strong, however, and will continue to be profitable, which should result in increasing market values in the future; it just may not be at the same level of growth we have experienced in the recent past."

Some pipeline companies experienced a decrease in taxable value as the result of a 2018 Montana Supreme Court decision, which resulted in their property tax rates dropping from 12 percent to between 1.5 percent and 3 percent.

In addition, the airline industry was affected by a 2017 Supreme Court Decision resulting in certain air carriers that operate across county and state lines, but fly under a contract for another airline, no longer have to pay property taxes if they are permanently based in Montana. Instead, they pay a fee in lieu of property taxes.

Barbour said that new taxable values reflect properties as of the Jan. 1 assessment rate, and the value of new construction that occurs after that date will be reflected in the following year's values.

"A significant portion of newly taxable value is typically attributable to increases in centrally assessed property values," Barbour said. "When centrally assessed property values decrease or increase only slightly, newly taxable values will be noticeably lower."

State adjustments leave Missoula eyeing 3.8 percent tax increase for FY 19

MISSOULA CURRENT, MARTIN KIDSTON AUGUST 15, 2018

The Missoula City Council faced a challenging headwind Wednesday as it dove back into the fiscal year 2019 budget, one that comes with no new revenue to maintain inflationary increases surrounding basic city services.

Adjustments to this year's taxable values by the Montana Department of Revenue has forced city leaders to propose a 3.85 percent tax increase despite Missoula's robust growth.

For a median-priced home of \$268,000, the increase amounts to \$39.40 a year. Faced with a similar challenge, the county is also considering a tax increase.

"There's a windy essay to be written about the structural imbalance of our state tax system and what can be done to make the system more equitable," Mayor John Engen told members of the City Council. "But we're left to play the hand we're dealt and in this case, that hand requires me to propose a modest increase in taxes to provide fundamental service to a growing community."

Engen and the City Council opted to wait this year for the state to release its new taxable values before diving into the budget. Those numbers came last week, showing a smaller increase than expected.

Missoula netted \$1.9 million in newly taxable property this cycle, though transferring Mountain Water to public ownership wiped \$600,000 from the tax rolls. Adjustments from the Montana Department of Labor served the biggest blow, consuming another \$1.3 million.

"Essentially, we start with no new revenue," Engen said. "Until the Montana Legislature gets serious about helping its partners in local government diversify revenues and find new money, we'll be cobbling together budgets like this one for the foreseeable future."

A statistically valid community survey completed earlier this year reflected where most citizens want the city to invest revenue. That included better streets, more police officers and general city maintenance.

In presenting his budget proposal Wednesday, Engen eliminated his initial request for a technician to maintain the city's network of traffic signals. The proposal also culled an additional prosecutor from the City Attorney's Office. The city's clean energy initiatives will be placed on hold, as well as an administrative assistance in municipal court.

Missoula County adopts FY 19 budget, urges state to explore other revenue streams

MISSOUILA CURRENT, MARTIN KIDSTON AUGUST 23, 2018

Missoula County Commissioner Jean Curtiss listens to testimony during Thursday's budget hearing. She said it was time for the state to explore other ways to raise revenue beyond property taxes. (Martin Kidston/Missoula Current)

Missoula County commissioners on Thursday adopted their fiscal 2019 budget with a property tax increase of 4.8 percent, leading them to suggest the time has come to explore other ways to raise revenue as a relief to property owners.

Of the 4.8 percent tax increase, 2.9 percent is attributed to the voter-approved library bond while 1.98 percent is associated with increases in county services.

Add it up and it accounts for a \$28.89 increase in property taxes on a home valued at \$200,000.

"Yes, if you take your taxes and divide it by 12, it's a lot of money every month people are having to take out of their income," said Commissioner Jean Curtiss. "I'm challenging people to start thinking about the other tools we don't have in Montana."

Those revenue sources include a local options tax and a sales tax, something city leaders have also suggested. Curtiss cited a recent study commissioned by the Missoula Economic Partnership which found that a quarter-cent sales tax in Missoula County would have generated \$5.6 million in 2016.

Curtiss said most cities and counties have no way to collect revenue from state visitors beyond a small gasoline and lodging tax. Tapping the state's visitors to help pay for essential services could provide relief to local property owners.

"You have to tie it to property tax, income tax, and reduce those things," Curtiss said. "You can't just add a tax, for sure, but we have to talk about it. We have 11 million visitors that come to Montana every year and spend \$1,000 a day or more, and we're not getting any of that to provide all the services."

Commissioner Dave Strohmaier agreed.

"We need to provide essential services to (tourists) along with residents, but unfortunately, those folks are contributing very little to our government operations," he said. "They might drop some money into lodging or other travel-related expenses, but they're not directly

"The state made cuts on the backs of all of you," she said. "While the state has other things it can do to raise taxes to finance services, the only tool cities and counties have is property tax."

Those who showed up at the city's budget session on Wednesday to protest higher taxes didn't make an appearance at the county's meeting. But others did and the sentiment was the same.

"I'm retired on a fixed income, and a lot my neighbors are in the same situation," said Huson resident Jerry Christensen. "I know people who are having to forgo medication to pay taxes. I never hear anything about cuts. I don't get a 4.8 percent increase in my retirement every year."

The IRS and America's Longest Running ADR Program Andrew Strelka and Sean Morrison

Ithough alternative dispute resolution (ADR) may feel like a new trend, it is far from a recent phenomenon. Over the last 100 years, federal government ADR has come in and out of fashion several times. The current surge of interest started in the 1990s with two acts of Congress and two executive orders that were supposed to save our country from its "culture of litigation." Through it all, however, one ubiquitous federal agency has remained steadfast in its commitment to ADR, arguably expending more time and resources than any other in pursuit of resolving disputes outside the courtroom: the Internal Revenue Service (IRS).

The IRS can trace its ADR roots as far back as the ratification of the Constitution, before we had a federal income tax. Today, the IRS Office of Appeals (Appeals) provides the forum for ADR between taxpayers and the government. Appeals exists to "resolve tax controversies, without litigation, on a basis which is fair and impartial to both the government and the taxpayer in a manner that will enhance voluntary compliance and public confidence in the integrity and efficiency of the Service." This article discusses the history of Appeals, its current workload and continuing attempts at innovation, and its efforts to establish and maintain independence while being located within the heart of the country's tax collector.

History of Appeals

When the federal income tax was in its infancy, tax agents wore the hats of both collector and arbiter. In 1861, Abraham Lincoln signed the first federal income tax into law to raise money for the Civil War. The legislation included a provision whereby regional tax assessors were required to spend at least two consecutive days a month at each county courthouse in their district to hear and summarily determine tax appeals. The separation of administrative appeals from tax collection did not happen until more than 50 years later when the Revenue Act of 1918 created the Advisory Tax Board, which consisted of six nongovernmental members appointed by the commissioner of internal revenue and approved by the secretary of the treasury. Board members were charged with reviewing tax issues after the taxpayer's examination had concluded, but before collection commenced.

Unfortunately, the Advisory Tax Board was short-lived. Only one year after its creation, its members chose to return to their former occupations. The commissioner subsequently replaced the defunct

board with the Committee on Appeals and Review. Under the Revenue Act of 1921, Congress provided taxpayers with the opportunity to appeal their cases directly to the committee prior to the actual tax assessment. The committee soon expanded its reach, establishing a presence west of the Mississippi River and creating a special committee to hear small cases of less than \$2,500.

As appeals increased, the government experimented with a specialized judicial forum. In 1924, Congress replaced the committee with the Board of Tax Appeals, an independent executive branch agency that would eventually evolve into the U.S. Tax Court. The board quickly accumulated an overwhelming backlog of 18,000 pending cases. In response, the IRS formed the independent Special Advisory Committee in 1927, the direct precursor to today's IRS Office of Appeals. Notably, the Special Advisory Committee included 28 revenue agents assigned throughout the country to hold conferences with taxpayers on factual issues. In 1930, its jurisdiction was expanded to include legal issues. The geographic scattering of IRS personnel with the authority to settle based on prospective hazards of litigation remains a defining feature of Appeals today.

In 1933, the Special Advisory Committee was superseded by the ominously named Technical Staff, which had the authority to bind the IRS in matters of \$5,000 or less for any one tax year. Over the following decades, the Technical Staff went through several reorganizations, becoming a decentralized independent regional organization called the Appellate Division in 1952. And as the jurisdiction of the Appellate Division increased, its employees changed titles from "technical advisors" to "appellate conferees," and finally to the current title of "appeals officers" in 1978, the same year the Appellate Division became the Appeals Division.

conferences are handled over the phone rather than in person. And Appeals recently rolled out Virtual Service Delivery, an audiovisual teleconferencing program, to provide face-to-face interactions between appeals officers on IRS campuses and taxpayers at regional offices. ¹² However, the perceived trend in moving away from actual face-to-face conferences has garnered recent criticism. ¹³

Improvement and Innovation

After a taxpayer submits a written protest disagreeing with a proposed tax deficiency, jurisdiction of the matter generally moves to IRS Appeals where resolution could take anywhere from 90 days to more than a year. In the face of potentially lengthy processing times and the high case volume described above, Appeals continues to test new pilot programs and scuttle ineffective ones in the hopes of reaching more efficient resolutions, including:

Early Referral: In the late 1990s, the IRS rolled out the Early Referral program to much fanfare from taxpayers and trade groups. ¹⁴ Under Early Referral, taxpayers (or the IRS with the consent of the taxpayer) send developed issues straight to Appeals while the rest of the matter remains within the jurisdiction of the consenting IRS examination or collection team. ¹⁵

Accelerated Issue Resolution (AIR) Program: Available to large corporate taxpayers, an AIR agreement allows the resolution of one issue to be applied to the same or similar issues found in other tax years where returns have been filed.¹⁶

Fast Track Programs: Under Fast Track Settlement (FTS) and Fast Track Mediation (FTM) the appeals officer takes the role of a neutral mediator and attempts to broker a settlement between the IRS and the taxpayer. The Both the IRS and the taxpayer must consent to using the Fast Track procedures; however, doing so will not foreclose the taxpayer's other Appeals options. The primary goal of Fast Track is to reach resolution quickly after acceptance into the program: 120 days for large corporate taxpayers, 60 days for other taxpayers, and even shorter for collection matters.

Post Appeals Mediation (PAM): If the standard Appeals process is unsuccessful, the taxpayer and Appeals can try mediation. ¹⁸ Under this "if all else fails" program, an additional appeals officer acts as a neutral mediator and attempts to bring the parties to resolution (hiring an outside co-mediator is possible).

Rapid Appeals Process (RAP): A relatively new program, RAP allows large corporate taxpayers and the IRS the option of attempting issue resolution in a single Appeals conference using mediation techniques. While FTS is available for taxpayers in the examination stage, RAP is available for taxpayers who are already in Appeals.¹⁹

Mutually Accelerated Appeals Process (MAAP): MAAP is primarily a resource allocation program whereby the IRS adds additional staff to the Appeals team in an attempt to shorten the time needed for resolution.²⁰

International Penalty Accelerated Appeals Consideration: This program allows certain qualifying taxpayers the chance to have Appeals review international reporting and record-keeping penalties after assessment but before payment. Depending on the value of the taxpayer's assets and when the penalties were assessed, the taxpayer may qualify for accelerated consideration.²¹

Appeals Arbitration: Under this program, the taxpayer and Appeals agree to enter binding arbitration.²² The arbitrator could be another appeals officer or a non-IRS third party. In 2015 the

IRS abandoned this program after only two settlements were ever reached during the program's 14-year run.²³

The Perception Challenge

As with any alternative to courtroom litigation, a major challenge is getting people to use it. The government therefore goes to great lengths to ensure that appeals officers are independent of the IRS agents that summon taxpayer records and assess deficiencies. In 1998, legislation was enacted that required the IRS to develop and implement a plan to prohibit ex parte communications between appeals officers and other IRS employees to the extent that such communications appear to compromise the independence of Appeals. Similarly, last year Congress codified the IRS's "Taxpayer Bill of Rights," which includes the "right to appeal an IRS decision in an independent forum."

These legislative solutions may be more branding than substance. The ex parte rules adopted by the IRS are complex, contain several exceptions, and state that they do not create any substantive rights affecting the taxpayer's tax liability or the IRS's authority. Likewise, the Taxpayer Bill of Rights is not phrased to create any concrete taxpayer remedies, making it little more than required reading for the commissioner and IRS employees. 28

In terms of substantive operational changes, the IRS recently adopted a new policy regime called Appeals Judicial Approach and Culture (AJAC). With the stated goal of "enhancing internal and external customer perceptions of a fair, impartial, and independent Office of Appeals," AJAC attempts to insulate the appeals officer from the work of IRS examination agents. Por example, under AJAC, the appeals officer is no longer a fact-finder and is required to attempt to settle a case on factual hazards even when the case is not fully developed by Exam. In addition, appeals officers are not to raise new issues or reopen issues on which the taxpayer and the IRS are already in agreement.

Whether AJAC has been successful largely depends on who you ask. IRS leadership has expressed careful praise, concluding that the policy strengthens a taxpayer's right to an independent review. The National Taxpayer Advocate, the ombudsman for federal taxpayers, has a different take: "Although AJAC's aspirations are commendable, its practical implementation is eroding the very perceptions of fairness and objectivity that it claims to bolster. In her 2015 report to Congress, National Taxpayer Advocate Nina Olson identified several problem areas—including taxpayer intimidation from examining agents now pressured to fully exhaust their fact-finding function and taxpayers being ping-ponged between offices while the case is developed—that contribute to a more adversarial environment.

Beyond AJAC, there is recent criticism regarding the IRS's decision to deny certain cases from ever proceeding to Appeals by designating these cases for litigation. If the IRS determines that a case presents recurring, significant legal issues affecting large numbers of taxpayers, it may designate the case for litigation; opting for a public court opinion as opposed to publishing guidance or working with the Treasury to promulgate a new regulation. ³² Some practitioners have noted a recent increase in such designations. ³³

While designating a case for litigation may serve a useful purpose in certain instances, the apparent increase seems to have garnered a legislative backlash. Two recently introduced bills would give taxpayers an absolute right to a hearing before Appeals.³⁴ An additional proposal would require the IRS to at least identify the types of cases

Patent Invalidity

In patent disputes, the party accused of infringement often challenges the validity of the asserted patents. An invalidity challenge may be based on prior art, meaning that the patented invention was disclosed in (or an obvious advance over) prior patents, technical publications, or actual devices. An invalidity challenge may also allege that a patent is invalid because the patent claims are indefinite or the patented invention is not adequately or sufficiently described in the patent itself. Often, a validity challenge is used by an accused infringer to rein in the scope of the patent to support a noninfringement defense. The accused infringer proposes a narrow claim construction and further argues that if the patent were construed more broadly, it would be invalid over the prior art. If this is the likely strategy, then the parties may wish to specify in the arbitration agreement that questions of infringement, validity, and claim construction should be decided together.

On the other hand, if the invalidity challenge is expected to be an independent attack on the asserted patents, then the parties may agree that invalidity based on prior art will be submitted to the U.S. Patent and Trademark Office (USPTO) through its post-grant proceedings, such as *inter partes* review proceedings (IPR) before the Patent Trial and Appeal Board. Such an agreement would greatly simplify the arbitration (and thus reduce costs and increase predictability) and leave the question of patent invalidity to the experts at the USPTO. Another option would be to stage resolution so that the question of infringement is decided first. If infringement is found, then the arbitration proceeds

with resolving the question of invalidity and, if appropriate, damages,

The foregoing are just some of the issues parties should consider when drafting an arbitration agreement. Careful, up-front thought will avoid an arbitration free-for-all and thereby provide for a relatively inexpensive dispute resolution process for patent disputes. ⊙



Steven Katz is an attorney in the Boston office of Fish & Richardson. He has more than 20 years of experience with litigating and resolving patent disputes. He has been with Fish & Richardson since 1998, and from 1996-1998, Katz was a judicial clerk for Hon. Alan D. Lourie of the U.S. Court of Appeals for the Federal Circuit. He can be reached at katz@fr.com. © 2016 Steven Katz. All rights reserved.

Endnotes

¹Am. Intellectual Prop. L. Ass'n, Report of the Economic Survey (2015).
²Parties are generally free to craft their own arbitration agreements for patent disputes, which are fully enforceable in federal court. *See*, e.g., 9 U.S.C. § 9.

³Markman v. Westview Instruments Inc., 517 U.S. 370, 372 (1996) ("the construction of a patent, including terms of art within its claim," is "exclusively" for "the court" to determine).

*See, e.g., Kimberly A. Mcore, Are District Court Judges Equipped To Resolve Patent Cases?, 15 Harv. J. L. & Tech. 1 (2001) (now Judge Moore, sitting on the U.S. Court of Appeals for the Federal Circuit).

IRS Appeals continued from page 31

30See supra n.12.

³¹National Taxpayer Advocate, Annual Report to Congress at 10 (Dec. 31, 2015).

32IRM 33.3.6.1 (08-11-2004).

³³Marie Sapirie, *News Analysis: The Increase in Cases Designated for Litigation*, 2016 Tax Notes 49-3 (March 14, 2016).

³⁴H.R.4128, 114th Cong. § 309 (2015), S.2333, 114th Cong. § 309 (2015).

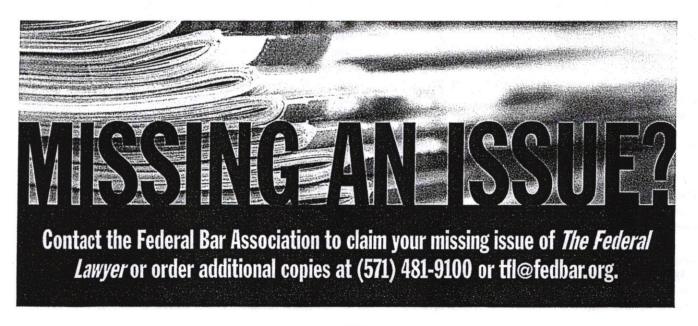
35S.2809, 114th Cong. § 3 (2015).

³⁶H.R.4128, 114th Cong. § 309 (2015); S.2333, 114th Cong. § 309 (2015); S.1578, 114th Cong. § 602 (2015).

³⁷See OMB Statement of Administration Policy on H.R. 5485 (June 21, 2016); Financial Services & General Government Appropriations Act, 2017, H.R. 5485, 114th Cong. (2016).

³⁸The FAST Act, Pub. L. No. 114-94, 129 Stat. 1312 (Dec. 4, 2015) (amending I.R.C. § 6306).

³⁹Lowell E. Mann, *Administrative Appellate Procedure Before the I.R.S.*, 62 A.B.A. J. 377 (March 1976).



Info DOR Reps. Should Bring to Tax Appeal Hearings:

Residential - Sales/Market Approach

Market value looks at property as a unit; land and improvements

- PRC for subject property
- Comparable Sales Report
- PRCs for each property used as a comparable
- Map of the applicable neighborhood with the subject property and all comparable properties identified
- CALP information used to establish the base size and per unit costs for the base and residual land value

Residential – Cost Approach

Values land & improvements separately. Land on market value through the use of a CALP and improvements on a cost-to-replicate bases (RCNLD)

- · PRC for subject property
- Information/knowledge about why each factor was assigned the level it was
- Photos of the property and improvements
- CALP information used to establish the base size and per unit costs for the base and residual land value
- Map of the applicable neighborhood with the subject property identified

Commercial - Income Approach

Assumes market value to be a function of the income potential of commercial property, that is, the income a typical property could earn, not what a taxpayer might actually earn.

- Property category (retail, hotel/motel, etc.)
- Number of businesses providing income information used in the model
- Number of sales in that category (i.e., retail, hotel/motel, etc.) that made up the data base for the cap rate used.
- Information on geographic area from which information was collected to produce the income model used (e.g., city of Billings, Yellowstone County, statewide) or map of the area used
- CALP information used to establish the base size and per unit costs for the base and residual land value